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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1938

No. 158

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PACIFIC EMPLOYERS INSURANCE COMPANY,  
PETITIONER,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE  
STATE OF CALIFORNIA AND KENNETH TATOR

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF CALIFORNIA

---

PETITION FOR CERTIORARI FILED JUNE 29, 1938.

CERTIORARI GRANTED OCTOBER 10, 1938.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 158

PACIFIC EMPLOYERS INSURANCE COMPANY,  
APPELLANT,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE  
STATE OF CALIFORNIA AND KENNETH  
TATOR

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

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**IN DISTRICT COURT OF APPEAL OF CALIFORNIA,  
FIRST APPELLATE DISTRICT, DIVISION TWO**

No. 10313

**PACIFIC EMPLOYERS INSURANCE COMPANY, Petitioner**

vs.

**INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and KENNETH TATOR, Respondents**

**PETITION FOR WRIT OF REVIEW—Filed July 29, 1936**

**By the COURT:**

**The within petition for a writ of review is denied.**

**Nourse, P. J.**

**Filed Sept. 30, 1936. Walter S. Chisholm, Clerk, by W. B. Sullivan, Deputy Clerk.**

[fol. 5]

**THE QUESTION**

If one who entered into a contract of employment in Massachusetts as part of the home office staff, the major incidents of his employment being centered in Massachusetts, and the laws of that state having limited his right to recover workmen's compensation benefits to those obtainable in Massachusetts, even though injured outside the State, is sent to California to do certain work because of an emergency, can he elect to take California compensation benefits or do either rules of comity or the full faith and credit clause of the Constitution of the United States require the Industrial Accident Commission of the State of California to recognize the exclusive remedy given to him in Massachusetts, thereby restricting him to Massachusetts benefits, the injured employee having continually remained on the Massachusetts payroll and being at all times supervised solely by officials of the home office and expected to do but a single job in California and then return to Massachusetts or go elsewhere in accordance with the instructions to be received from his supervisors in Massachusetts?

[fol. 6]

[Title omitted]

## PETITION FOR WRIT OF REVIEW

To the Honorable Presiding Judge and to the Associate Justices of the District Court of Appeal of the State of California, First Appellate District, Division Two:

Petitioner above named specifically applies by this, its verified Petition for Writ of Review, directed to the Industrial Accident Commission of the State of California, to review and annul an award of compensation, and, in support thereof, sets forth the following facts and reasons for the issuance of said writ:

## I

That the Devey & Almy Chemical Company, engaged in business all over the United States, with its principal place of business in Massachusetts, was at all times herein mentioned, a Massachusetts corporation and operated a branch, known as its Pacific Coast Branch, in the City of Oakland, County of Alameda, State of California.

[fol. 7]

## II

That Pacific Employers Insurance Company, a corporation, was at all times mentioned and now is a corporation lawfully carrying on an insurance business in the State of California, and on or about the 17th day of October, 1935, the workmen's compensation insurance carrier for said Pacific Coast Branch of Dewey & Almy Chemical Company, under the Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto of the State of California.

## III

That Hartford Accident & Indemnity Company, a corporation, was at all times mentioned herein and now is, a corporation lawfully carrying on an insurance business in the State of California and in the State of Massachusetts and that on or about the said 17th day of October, 1935, the workmen's compensation insurance carrier for the Dewey & Almy Chemical Company in Massachusetts, the head office of the said Dewey & Almy Chemical Company, and said policy of workmen's compensation insurance carried with it what is known as an employer's liability coverage, which

provided that if a suit for damages were brought by an employee against the employer, no matter where the injury might occur, said policy would cover it.

#### IV

That the applicant was an employee of the said Dewey & Almy Chemical Company at its Massachusetts place of business, in the capacity of chemical engineer and sus-[fol. 8] tained an injury arising out of and in the course of his employment on or about October 17, 1935, when his right major hand became caught in a piece of machinery while he was attempting to improve the process of his said employer being used at the Pacific Coast Branch, located in the City of Oakland, this State, which he had been especially sent to California to improve. He had no other duties in California other than to improve this particular process, which was the sole and only reason for his having been sent to California.

#### V

That on or about the 19th day of November, 1935, the applicant filed a claim before the Industrial Accident Commission of the State of California, to have it determined whether or not he sustained injuries arising out of and in the course of his employment. The claim was numbered 49,516. Your petitioner appeared and admitted that it was the compensation insurance carrier for said Pacific Coast Branch of said Dewey and Almy Chemical Company, but denied that it was the compensation insurance carrier for said Dewey & Almy Chemical Company in reference to its Massachusetts operations, or its coverage extended to cover the injuries to Mr. Tator, or that the Industrial Accident Commission had any jurisdiction over the injury of Mr. Tator.

#### VI

That, thereafter, hearings were regularly and duly had before a Referee of said Industrial Accident Commission, [fol. 9] and at that time your petitioner submitted Points and Authorities pointing out that the applicant was a Massachusetts employee and not employed by the Pacific Coast Branch of the employer and that in accordance with his contract of employment, the State of Massachusetts had the exclusive right to grant him compensation and that

the California tribunal could not deny comity and full faith and credit to the laws of Massachusetts. It was pointed out further that the facts of this case not only showed that the applicant, Tator, had entered into his contract of employment in Massachusetts and there elected to grant that State the exclusive right to adjudge his right to compensation, no matter where injured, but further, that the facts conclusively showed he was continually employed there under the same contract of employment and that all of the important incidents of his employment were at all times in Massachusetts. Briefly, such incidents were: (1) He was hired there. (2) He could only be discharged by persons there. (3) His salary was paid there. (4) His expenses came from there. (5) His home was there. (6) He was a Massachusetts resident and voter. (7) He was under the sole control of superiors there and was following instructions from there at the time of his injury. (8) He was sent here temporarily and was to await instructions from there as to where he should go and what he should do when he completed his special errand and assignment here. It was pointed out that he was in California at the time of the hearing on his application, [fol. 10] only for purposes of the hearing and had no intention of remaining away from his Massachusetts home and employer, thereafter. Finally, it was pointed out that he had no right to elect between the compensation laws of Massachusetts and California, but had already made his election to come within the laws of Massachusetts at the time his contract of employment was made, and that his sole right of recovery was in Massachusetts and California and had no jurisdiction, whatsoever, in the case.

## VII

That thereafter, on April 25th, 1936, the said Commission did issue its Findings and Award which held that at the time of his injury, Tator was employed by the Pacific Coast Branch of the Dewey & Almy Chemical Company; that your petitioner was liable for the injuries of the applicant; that the said applicant was entitled to disability indemnity payments at the rate of Twenty-five and 00/000 Dollars (\$25.00) per week for one-hundred sixty-nine (169) weeks and medical expenses. Copy of said Findings and

Award is attached hereto and marked Petitioner's Exhibit A.

## VIII

That subsequent thereto and within the time allowed by law, your petitioner petitioned for rehearing on the grounds that the Findings and Award were in error because Tator was not employed by the Pacific Coast Branch, and were unconstitutional in that full faith and credit had been denied [fol. 11] the laws of Massachusetts contrary to the terms of Article IV, Section 1, of the Constitution of the United States and the decisions of the Supreme Court of the United States; that comity had likewise been denied to the State of Massachusetts; that the evidence did not justify the findings of fact; that the findings of fact did not justify the award; that the award was unreasonable; that the Commission acted without and in excess of its powers; that the record showed clearly that although he was working at the California Branch when injured, he was not employed by that branch.

At that time, your petitioner specifically objected to the finding that the applicant was employed "by the Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation," in that there was not the slightest justification for qualifying the name of his employer and limiting his employment to the Pacific factory when the facts clearly and indisputably show that he entered into his contract of employment in Massachusetts and had continually since that time been working under that contract and no new contract or employment was ever made nor was there the slightest occasion for believing that the old contract of employment had terminated and, therefore, there could be no question that he was employed by anyone other than the Dewey & Almy Chemical Company in Massachusetts, regardless of where he may have been working at the time of his injury.

[fol. 12]

## IX

That after said Petition for Rehearing was submitted, the said Industrial Accident Commission, on the 30th day of June, 1936, denied such Petition for Rehearing, copy of such denial being attached hereto and made a part hereof and marked Petitioner's Exhibit B.

## X

Petitioner applies for this Writ of Review upon the ground that the Commission acted without and in excess of its powers; that the evidence does not justify the findings of fact; that the findings of fact do not support the award; that the Findings and Award is unreasonable; that the Commission had denied the comity to which the State of Massachusetts is entitled; that in denying full faith and credit to the laws of Massachusetts, the Commission has committed an unconstitutional act and denied effect to the mandate of the Supreme Court of the United States as expressed in cases similar to the instant case; that they have ignored the laws of Massachusetts as interpreted by the highest courts of that State; that there is no evidence to support the finding he was employed by the Pacific Coast Branch of the employer.

In support of this application for Writ, your petitioner more specifically points out that there is no question the Massachusetts law provides for compensation in this case and that the Massachusetts tribunal is open to Tator to file his claim. It cannot be denied that because most of the [fol. 13] incidents of the employment were in Massachusetts, that State has a greater interest in this matter than has the State of California. Furthermore, there is no question but that where an injury occurs to a Massachusetts' employee (i. e. one who has entered into his contract of employment there) outside of that commonwealth and such employee did not give the notice provided by statute, he is deemed to have waived any rights under the laws of the foreign jurisdiction, and is restricted to Massachusetts benefits. It is admitted that Tator failed to give the necessary notice.

## XI

Your petitioner refers to the accompanying Memorandum of Points and Authorities, marked Petitioner's Exhibit C, as stating additional facts and reasons for the issuance of a Writ of Review.

## XII

That unless such Findings and Award of said Industrial Accident Commission is annulled, your petitioner will be deprived of property without due process of law, and in

violation of Section 13, Article 1 of the Constitution of the State of California, and in violation of Section 1 of Article 18 of the Amendments to the Constitution of the United States of America, and your petitioner claims the benefits and protection of those provisions.

### XIII

Your petitioner had no right to appeal from said Findings [fol. 14] and Award of said Commission, and has no plain, speedy, and adequate remedy other than Writ of Review. Your petitioner is a party beneficially interested in this proceeding and the names of the parties who will be affected by this petition are your petitioner and the respondents herein.

### XIV

That by the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917 and Amendments thereto, of the State of California, your petitioner is permitted to make application to this Court for a Writ of Review to annul an unlawful award of the Industrial Accident Commission of the State of California.

Wherefore, your petitioner prays:

1. That a Writ of Review issue out of this Court to the said Industrial Accident Commission commanding it to certify fully to this Court, at a specified time and place, the record and proceedings in this case, that the same may be inquired into and determined by this Court.
2. That these said matters and records be fully heard and considered by this court, and that it be ordered, adjudged and decreed that the Findings and Award of said Industrial Accident Commission against your petitioner be annulled.
3. That your petitioner be granted such other and further relief as may be proper and just in the premises.

Respectfully submitted, W. N. Mullen, Attorney for Petitioner.

[fol. 15] *Duly sworn to by W. N. Mullen. Jurat omitted in printing.*

[fol. 16]

[File endorsement omitted]

## IN SUPREME COURT OF CALIFORNIA

No. 10313

PACIFIC EMPLOYERS INSURANCE COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and KENNETH TATOR, Respondents

PETITION FOR HEARING—Filed November 7, 1936

[fol. 17]

## THE QUESTION

If an employee enters into his contract of hire in State A, where the laws provide that unless he gives written notice to the contrary to his insured employer, he waives his rights at common law and under the laws of all other States to recover for an industrial injury, but has a right to collect compensation for such an injury in State A, and if the head office of the employer is located in State A, where the employee at all times received his instructions, and where he is controlled and supervised and where his payroll is maintained, the employee being a resident and registered voter of State A, and is sent on a special errand to State B to remedy a defect in a process of the employer's factory, and to do nothing further, and is injured in State B, has State B jurisdiction of the employee's claim for compensation or must either full faith and credit or comity be granted to the laws of State A, when such laws are set up as a matter of defense?

[fol. 18]

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[fol. 19]

[Title omitted]

PETITION FOR HEARING

To the Honorable William H. Waste, Chief Justice, and the Associate Justices of the Supreme Court of the State of California:

Your petitioner above named respectfully applies for a hearing by this, its verified petition, after denial of Petition for Writ of Review by the District Court of Appeals of the Third Appellate District, dated September 30, 1936.

Petitioner, Pacific Employers Insurance Company, a corporation, respectfully alleges, as follows:

I

That the petitioner, Pacific Employers Insurance Company, now is and was at all times, herein mentioned, an insurance company authorized to do business in the State of California, and to insure employers against their liability under the Workmen's Compensation, Insurance and Safety Act of the State of California of 1917, and Amendments thereto.

[fol. 20]

## II

That the Dewey & Almy Chemical Company, engaged in business all over the United States, with its principal place of business in Massachusetts, was at all times, mentioned herein, a Massachusetts corporation, and operated a branch, known as its Pacific Coast Branch, in the City of Oakland, County of Alameda, State of California.

## III

That Hartford Accident & Indemnity Company, a corporation, was at all times, mentioned herein, and now is, a corporation, lawfully carrying on an insurance business in the State of California, and in the State of Massachusetts, and that on or about the 17th day of October, 1935, the workmen's compensation insurance carrier for the Dewey & Almy Chemical Company in Massachusetts, the head office of the said Dewey & Almy Chemical Company, and said policy of workmen's compensation insurance carried with it what is known as an employer's liability coverage, which provided that if a suit for damages was brought by an employee against the employer, no matter where the injury might occur, said policy would cover it.

## IV

That on or about the said 17th day of October, 1935, the said Pacific Employers Insurance Company was the workmen's compensation insurance carrier for the said Pacific Coast Branch of the Dewey & Almy Chemical Company only for its liability under the Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto of the State of California.

## V

That the applicant was an employee of the Dewey & Almy Chemical Company at its Massachusetts place of business, where his contract of employment was entered into, in the capacity of chemical engineer, and sustained an injury arising out of and in the course of his employment, on or about October 17th, 1935, when his right major hand became caught in a piece of machinery, while he was attempting to remedy a defect in the process of his said employer's Pacific Coast factory, having been specially dispatched by the head

office in Massachusetts by airplane, to Oakland, to improve such process, and when this assignment was completed, he was to return to Massachusetts.

## VI

That on or about the 19th day of November, 1935, the applicant filed a claim before the Industrial Accident Commission of the State of California, to have it determined whether or not he sustained injuries arising out of and in the course of his employment. The claim was numbered 49516. Your petitioner appeared and admitted that it was the compensation insurance carrier for said Pacific Coast Branch of said Dewey and Almy Chemical Company, but denied that it was the compensation insurance carrier for said Dewey & Almy Chemical Company in reference to its [fol. 22] Massachusetts operations, or its coverage extended to cover the injuries to Mr. Tator, or that the Industrial Accident Commission had any jurisdiction over the injury of Mr. Tator, because the laws of Massachusetts provided for Tator's exclusive remedy, unless he gave written notice to the contrary, at the time he entered into his contract of employment, and that as he had not given such notice, he was bound by his contract, and the laws of Massachusetts which were a part thereof.

## VII

That, thereafter, hearings were regularly and duly had before a Referee of said Industrial Accident Commission, and at that time your petitioner submitted Points and Authorities pointing out that the applicant was a Massachusetts employee and not employed by the Pacific Coast Branch of the employer and that in accordance with his contract of employment, the State of Massachusetts had the exclusive right to grant him compensation, even though he was injured in California, and that the California tribunal could not deny comity and full faith and credit to the laws of Massachusetts. It was pointed out further that the facts of this case not only showed that the applicant, Tator, had entered into his contract of employment in Massachusetts and there elected to grant that State the exclusive right to adjudge his right to compensation, no matter where injured, but further, that the facts conclusively showed he was continually employed there under the same contract of employment, and that all of the important incidents of his em-

[fol. 23] ployment were at all times in Massachusetts. Briefly, such incidents were: (1) He was hired there. (2) He could only be discharged by persons there. (3) His salary was paid there. (4) His expense came from there. (5) His home was there. (6) He was a Massachusetts resident and voter. (7) He was under the sole control of superiors there and was following instructions from there at the time of his injury. (8) He was sent here temporarily and was to await instructions from there as to where he should go and what he should do when he completed his special errand and assignment here. It was pointed out that he was in California at the time of the hearing on his application, only for purposes of the hearing and had no intention of remaining away from his Massachusetts home and employer, thereafter. Finally, it was pointed out that he had no right to elect between the compensation laws of Massachusetts and California, but had already made his election to come within the laws of Massachusetts at the time his contract of employment was made, and that his sole right of recovery was in Massachusetts and California had no jurisdiction, whatsoever in the case.

## VIII

That thereafter, on April 25th, 1936, the said Commission did issue its Findings and Award which held that at the time of his injury, Tator was employed by the Pacific Coast Branch of the Dewey & Almy Chemical Company; that your petitioner was liable for the injuries of the applicant; that [fol. 24] the said applicant was entitled to disability indemnity payments at the rate of Twenty-five and 00/100 Dollars (\$25.00) per week for one-hundred sixty-nine (169) weeks and medical expenses. Copy of said Findings and Award is attached hereto and marked Petitioner's Exhibit A.

## IX

That subsequent thereto and within the time allowed by law, your petitioner petitioned for rehearing on the grounds that the Findings and Award were in error because Tator was not employed by the Pacific Coast Branch, and were unconstitutional in that full faith and credit had been denied the laws of Massachusetts, contrary to the terms of Article IV, Section 1, of the Constitution of the United States and the decisions of the Supreme Court of the United

States; that comity had likewise been denied to the State of Massachusetts; that the evidence did not justify the findings of fact; that the findings of fact did not justify the award; that the award was unreasonable; that the Commission acted without and in excess of its powers; that the record showed clearly that although he was working at the California Branch when injured, he was not employed by that branch.

At that time, your petitioner specifically objected to the finding that the applicant was employed "by the Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation," in that there was not the slightest justification for qualifying the name of his employer and limiting his employment to the Pacific factory when the [fol. 25] facts clearly and indisputably show that he entered into his contract of employment in Massachusetts and had continually since that time been working under that contract and no new contract of employment was ever made nor was there the slightest occasion for believing that the old contract of employment had terminated and, therefore, there could be no question that he was employed by anyone other than the Dewey & Almy Chemical Company in Massachusetts, regardless of where he may have been working at the time of his injury.

That in its answer to your petitioner's Petition for Writ to the District Court of Appeal, the respondent Commission admitted that it was in error in finding that Tator was employed by the Pacific Coast Branch of his employer.

## X

That after said Petition for Rehearing was submitted, the said Industrial Accident Commission, on the 30th day of June, 1936, denied such Petition for Rehearing, copy of such denial being attached hereto and made a part hereof, and marked Petitioner's Exhibit B.

## XI

That thereafter, and within thirty days after said decision on rehearing, your petitioner herein petitioned for a Writ of Review in the District Court of Appeal in the State of California, Third Appellate District, the papers being numbered 10,313 and, thereafter, on the 30th day of

September, 1936, said Petition for Writ of Review was [fol. 26] denied, without an opinion being filed.

## XII

That said Petition for Writ of Review was made upon the same contentions as stated and herein contained, and in the Petition for Rehearing before the Industrial Accident Commission, it being emphasized that an important constitutional question was involved, it never having been decided in this State before.

## XIII

That in its Petition for Writ before the Appellate Court, petitioner contended that the evidence did not justify the findings of fact; that the findings of fact did not support the award; that the award was unreasonable. It was further contended that the Commission had no jurisdiction in the case because the applicant's contract of employment was made in the State of Massachusetts, where he was continually employed, and where the laws provided for exclusive jurisdiction over his claim for workmen's compensation, and that a California tribunal would be required by the Constitution of the United States to grant full faith and credit to the laws of Massachusetts and, therefore, the Commission would be without jurisdiction in this case.

## XIV

That in support of this Petition for Hearing by your Honorable Court, your petitioner respectfully submits its Points and Authorities attached hereto and marked Peti- [fol. 27] tioner's Exhibit C.

This Petition for Hearing in your Honorable Court is based upon the ground that it is necessary for your Court to review this case to secure uniformity of decision in the settlement of an important question of law, and unless the decision of the respondent Commission is reversed, full faith and credit will be denied the laws of Massachusetts and comity will likewise be denied; all being questions never decided in such a case as this.

It will be pointed out in the Points and Authorities that the decision of the respondent Commission is contrary to the decisions of the Supreme Court of the United States,

and that the respondent Commission has taken jurisdiction which lawfully and rightfully belongs to a sister State.

If the decision of the Industrial Accident Commission is allowed to stand, we will have a California decision not in accordance with the provisions of Article IV, Section 1 of the United States Constitution, as interpreted by the Supreme Court of the United States in a case directly in point and it will be necessary to ask the said Supreme Court for relief in this case, and a reaffirmance of its previous decision.

That unless said denial of Petition for Rehearing is annulled and the Findings and Award set aside, your petitioner will be deprived of its property without due process of law, and in violation of Section 13 of Article 1 of the Constitution of the State of California, and in violation of [fol. 28] Section 1, Article IV, of the Amendments to the Constitution of the United States of America, and your petitioner claims the benefits and protection of said provisions.

Wherefore, petitioner prays that your Honorable Court order this case to be heard and determined by the Court, as provided by law, and for such other and further relief as it may deem proper.

W. N. Mullen, Attorney for Petitioner. Richard Barry, of Counsel.

[fols. 29-35] *Duly sworn to by W. N. Mullen. Jurat omitted in printing.*

[fol. 36] EXHIBIT "C" TO PETITION FOR HEARING

IN SUPREME COURT OF CALIFORNIA

No. 10313

[Title omitted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER

This is a procedure to review and annul an award of the Industrial Accident Commission in favor of Kenneth Tator against your petitioner, after the District Court of

Appeal of the State of California, Third Appellate District, on the 30th day of September, 1936, denied petitioner's petition for Writ of Review without an opinion.

### Foreward

The facts have been generally stated in the foregoing Petition for Hearing, but will now be stated in greater detail. Let your Honorable Court be reminded that this case involves the rights of the several states and a constitutional question and, therefore, it is well to have a complete statement of all the facts before the complex law is applied.

[fol. 37]

I

### The Facts

Kenneth Tator, having graduated from the Massachusetts Institute of Technology, was hired by the Dewey and Almy Chemical Company, a Massachusetts corporation, as a chemical engineer. He entered into his contract of employment in that, his home State, and no new or further contract of employment was entered into, thereafter, or at any time prior to his injury, which is the basis of his claim. At the time the written contract of hire was entered into, the laws of Massachusetts then provided and still do provide, in substance, that an employee is deemed to have waived his rights to compensation against his employer under the laws of any other jurisdiction, unless he gives written notice to his employer, at the time of the contract of hire is made, that he claims such other rights. The complete text of these sections are set forth, hereafter, in these Points and Authorities. Tator did not give the necessary notice in writing or otherwise.

It was part of Tator's job to go to various states as a service man and to visit the various factories of his employer. Generally speaking, he was continuously employed in Massachusetts. Approximately a year and a half ago, he was sent by his employer to fraternize with prospective customers and customers in the western states other than California, that dealt directly with the Pacific Coast Branch of the employer, located in Oakland, California. He then returned to Massachusetts and continued with his duties [fol. 38] demanded of him there.

The employer, the Dewey & Almy Chemical, was covered by the Hartford Indemnity Company for employer's compensation liability arising under the laws of that state. During Tator's previous trip to the West Coast, mentioned above, his entire payroll was reported to the Hartford Company, and his salary and expenses came direct to him and were not charged to the Oakland Branch. Of course, a certain amount, as a part of the employer's home office overhead in Massachusetts was made a flat charge against the Oakland Branch, as a matter of bookkeeping.

The Hartford Indemnity Company policy, mentioned above, carried with it what is known as an employer's liability coverage, which provides that if a suit is brought by an applicant against his employer for damages, no matter where the injury might occur, said policy would cover it.

A short time prior to Tator's injury, it was reported to the home office in Massachusetts, that the Pacific Coast Branch, located in Oakland, California, was not manufacturing a certain product to the satisfaction of one of its important customers. At that time, Tator was in the State of New York on business of his employer. Tator was sent a wire and instructed to come to California by airplane to remedy the situation here. The job he was to do here was a matter of weeks or a few months, concerning the process of manufacture of this certain product, but on completion of this work or special assignment, he was to return home or go elsewhere, as instructed by the Massachusetts office. The Pacific Coast manager could not tell him where to go next, because he was never transferred here and was still under the control of his superiors in the East.

While Tator was in California, he was following out instructions given him by his superiors in Massachusetts before he came West, because if the process used was not improved, a national contract would be lost.

If Tator were to be discharged, the word would have to come from his superiors in Massachusetts. They had the final authority. This point is established by the testimony of the applicant and the Pacific Coast Manager as well.

While Tator was here on his last trip and while temporarily working at the Oakland factory, his salary was being paid by the head office in Massachusetts and deposited

to his account in that State, from which he made withdrawals. Although a part of his salary may have been charged against the expenses of the Pacific Coast Branch, so were part of the salaries of executives in the East regularly charged against the branch here as a matter of bookkeeping, whether they were in California or not, as supervision was exercised from the East over the Pacific Coast Branch. He was given certain expense money to come to California and when he found he did not have sufficient — to complete his stay, because of his injury, an amount was advanced him [fol. 40] by the Pacific Coast Branch, to be reported to the eastern office as a charge and for reimbursement.

Tator never intended to establish a home in California, but was at all times, herein mentioned, and still is domiciled in Massachusetts, where he testified he left his personal belongings, where he had his home and where he has always continued to be a registered voter. He came to California for a specific purpose as part of his job in Massachusetts, and when that purpose was accomplished, he was expected to return to his Massachusetts job, and go on as was his practice and expected of his employment. His status was really no different from an executive officer who might have come from Massachusetts to attempt to adjust an acute sales situation.

While endeavoring to improve the process being used by the Pacific Coast Branch, Tator sustained the injuries, which are the subject matter of this action.

After Tator had sufficiently recovered from his unfortunate injury to again be able to get about, he was to return to his home State and to his job in Massachusetts, and was so instructed to do by his employer in Massachusetts. Tator did so return to Massachusetts, but he tarried long enough in California to invoke the legal process of this State, on advice of counsel, and ask for his compensation money in California, where he undoubtedly was told the amount he would receive in the event the tribunal here took jurisdiction, would be somewhat greater than the amount he would [fol. 41] receive in the State of his domicile.

#### Attitude of the Respondent Commission

The respondent Commission went out of its way to take jurisdiction which properly belonged to another State. It attempted to sidestep the constitutional and jurisdictional

questions involved by making the finding that Tator was employed by the Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation.

The natural inference from that finding was that Tator was employed here to do work here and was, generally speaking, a California employee and the only interest Massachusetts had was that the employer was incorporated there.

Such, however, was not the case. The answers of the respondents before the District Court of Appeal have admitted error in regard to that finding, and your Honorable Court is respectfully requested to take cognizance of such admission.

The evidence conclusively shows that Tator was continually under control of the Massachusetts office. He worked in and out of that office and performed functions strictly as a result of direct orders originating there. At the time of his injury he was following directions given to him before he left for California.

Obviously, the crossing of a few state lines on a special mission would not cause a new contract of hire to come into existence, and the finding of the Commission, therefore, that Tator was employed by your petitioner's insured here, [fol. 42] was no more than a futile attempt to defeat the effect and purpose of the law.

Although the Commission refused to make a clear-cut finding and frankly face the issues herein involved, we may now proceed with a discussion of the law, knowing with absolute certainty that Tator was employed by the employer in Massachusetts, and that the careless finding of fact, mentioned above, has been disposed of.

The place of injury was California. The place of contract was Massachusetts.

## II

### The Law

Section 24 of Chapter 152 of the Annotated Laws of Massachusetts reads as follows:

*"Notice by Employee to Retain Rights at Common Law.*  
—An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein

occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance. An employee who has given notice to his em- [fol. 43] ployer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve. (1911, 751, I, Section 5; 1912, 666, Section 2; 1927, 309, Section 2.)

Section 26 of Chapter 152 is as follows:

“Payments; Presumption of Employment; Extraterritoriality.—If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer’s authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the juris- [fol. 44] diction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer’s general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee. (1911, 751, II, Section 1; 1927, 309, section 3; 1930, 205; 1931, 170.)”

In regard to compensation benefits, the above sections provide that an employee is deemed to have waived his common law rights and also his rights to compensation under the laws of any other jurisdiction unless he gives the required notice at the time the contract of hire is entered into.

Having waived his rights otherwise and elsewhere, his only rights, thereafter, are in Massachusetts. Having no other rights, his Massachusetts rights are necessarily exclusive.

### A United States Supreme Court Decision is Controlling Here

The case of Bradford Electric Light Company vs. Clap-  
[fol. 45] per, 286 U. S. 145, hereinafter referred to as the Bradford Case, holds that full faith and credit requires recognition of an exclusive remedy given by a State in which the major incidents of an employment relationship are centered. The same incidents which are centered in Massachusetts in the case at bar, were centered in Vermont in that case. The Vermont statute provided, as follows:

"Right to compensation exclusive. The rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury. Employers who hire workmen within this State to work outside of the State, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this State by accident arising out of and in the course of such employment, and all contracts of hiring in this State shall be presumed to include such an agreement."

### Chapter 241, Section 5774 of Vermont General Laws.

[fol. 46] In the Bradford case, Clapper was a resident of Vermont and was employed mainly in that State by a Vermont corporation. His contract of employment was entered into in Vermont. He was killed while working in New Hampshire on a repair job. The deceased in this case was a "trouble shooter", just as Tator was in the instant case,

sent out from the main office to remedy situations at other locations. The Vermont Act, quoted above, provided that if employer and employee did not object in the manner provided, recovery for an injury received outside the State could be had in Vermont, and such recovery was the exclusive remedy. Clapper's administratrix brought an action in New Hampshire under the death statute of that State and the case was removed to the Federal Courts. The Supreme Court reversed the District Court and held that it was a denial of full faith and credit to refuse to allow the Vermont Act, a "public Act" within the meaning of the Constitution, to be set up as a defense.

Justice Brandeis delivered the opinion of the Court, and held that while the full faith and credit clause does not require the affirmative enforcement of a statutory cause of action of another State where the forum has provided no appropriate remedy or where the enforcement would be obnoxious to the public policy of the forum, it does require that the statute of another State be followed when set up as a defense.

[fol. 47] Position of the Respondents

The position of the respondents is well known to your petitioner as Points and Authorities submitted to the Commission before and after the Findings and Award were issued, and later to the District Court of Appeal have drawn the same arguments. These arguments, although absurd in most instances, will be anticipated here and disposed of as they apply to such points as are taken up.

The Massachusetts Act is "Exclusive"

The respondents have argued that the Massachusetts statute quoted above was not meant to be "exclusive" because it, unlike the Vermont statute, *supra*, did not use the word "exclusive". Yet, if all other rights have been subtracted, how can it be considered to be otherwise?

The respondents cite no authority for their position on that point. Your petitioner has cited and will again cite Massachusetts authorities.

In McLaughlin's case, 274 Mass. 217, the Massachusetts Court refused to recognize the recovery of compensation benefits in another State, as barring further recovery in Massachusetts, where the contract of employment was en-

tered into in Massachusetts, although the injury occurred in the State where the first recovery was made. The Massachusetts statute had not been raised as a defense to the recovery in the other State because it was made by agreement of the parties, and was not before a Court or other tribunal. [fol. 48] In *Migues* case, 183 N. E. 847, where the facts and result were substantially the same, the Massachusetts Court cited and relied on the *Bradford* case in interpreting their statute, and used the following language:

*"Massachusetts has assumed exclusive jurisdiction of rights to compensation when the contract of employment is made here, and no notice in writing of claim of right is given."* (Italics added.)

Can there be any doubt but that Massachusetts intended her statute to be exclusive? Obviously, these authorities are conclusive on this point, and the respondents cannot forcibly argue otherwise.

#### The Massachusetts Act Excludes the Recovery of "Compensation" Elsewhere

Another argument of the respondents in support of their position, has been that the Massachusetts statutes refer to the recovery of compensation benefits in Massachusetts, but only exclude the recovery of damages in other States. They argue that the word "damages" as used in the Massachusetts statute cannot possibly include compensation benefits and, therefore, the Act is inapplicable here.

The respondents have made a great deal of this argument, and have used many pages, previously, to expound it. Regardless of how they believe the words "damages" and "compensation" should be technically defined, however, [fol. 49] your petitioner merely refers again to *McLaughlin*'s case and *Migues*'s case for support of its own position. In each of those cases, compensation benefits were recovered in other States. If the argument of the respondent is true, the statutes would not have been applied, and furthermore, would never have been considered. However, Sections 24 and 26 of the Massachusetts Act were considered and held to be applicable, and the Massachusetts Court refused to recognize the recovery in a sister State as barring recovery in Massachusetts. The failure of the respondents to recognize the fact that these Massachusetts cases dealt with "compen-

sation" rather than "damages", in accordance with their own definitions and false distinctions, must be regarded as a failure to answer.

Now, having shown beyond possible argument that the contract of employment in this case was made in Massachusetts, and that Tator was a Massachusetts employee, employed by his employer there; that the Massachusetts Courts have interpreted their statute as being exclusive; that Massachusetts authority shows, definitely, the statute in question refers to "compensation", and not simply to "damages", in the limited sense offered by respondents; your petitioner will, therefore, proceed with a brief discussion of the Bradford case, and the extent to which it goes.

**The Rule Announced in the Bradford Case Was Intended to Apply to the Precise Situation Now Before Your Honorable Court**

The facts of the Bradford case and the instant one, are [fol. 50] indistinguishable, and it is foolish to pretend that the law expounded there was not meant to cover the situation we now face.

The Bradford case held where an employee enters into his contract of employment in one State, and is injured in another State, and attempts to recover in the State of his injury, it is a good defense to such recovery to set up the laws of the State of contract, when such laws provide that rights to compensation can only be had there and rights in other States are waived unless expressly reserved in a required manner. The case held that such a law was a public act, which was entitled to full faith and credit, under the terms of the United States Constitution.

The majority opinion expressed through Mr. Justice Brandeis, employed the full faith and credit clause, and did not go off on the ground of comity. Mr. Justice Stone specially concurred, and was of the opinion that the case could have been decided on comity grounds.

Obviously, a special concurrence by a single Justice could not limit the majority opinion, and in relying almost entirely on Mr. Justice Stone's opinion in that case, and the majority opinion in the case of Alaska Packers vs. Ind. Acc. Com., 55 Sup. Ct. Rep. 518, the respondents bare the weakness of their position. The "exclusive" type of statute was not involved in the Alaska Packers case, and the full faith and credit clause was not applicable. The Alaska Packer's case was

[fol. 51] simply an affirmation of the doctrines emphasized, and the rules made in the case of *Quong Ham Wah vs. Ind. Acc. Com.*, 184 Cal. 26, 255 U. S. 445 (dismissed). The contract there was made in California, and the employee injured elsewhere, and the Court simply reaffirmed the already established rule that the California statute had extra-territorial effect.

If your Honorable Court chooses to accept the views of the respondents that the rules of the Bradford case were warped by the special concurring opinion and the Alaska Packers case, and therefore, questions of public policy and respective interests of the States should be considered, then it is submitted the result should be the same; that is, regardless of the theory employed, jurisdiction will properly be found to be with Massachusetts.

When speaking of public policy, the respondent applicant quoted from the Bradford case, as follows:

"The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appear, he had no dependents there. It is difficult to see how the State's interest would be subserved under such circumstances by burdening its courts with this litigation."

With friendly but confident mockery, your petitioner has suggested a mere substitution of proper names and submits [fol. 52] that your Honorable Court or the Supreme Court of the United States might well say:

"The interest of California was only casual. Kenneth Tator was not a resident there. He was not continuously employed there. So far as it appears, he had no dependents there. It is difficult to see how the state's interest would be subserved under such circumstances by burdening its courts with this litigation."

Although the facts of the Alaska Packers case are not in point here, the respondents have ingeniously argued that the "balance of interests" doctrine discussed in that case should be employed here. Your petitioner's only answer is that such a doctrine has no place here, and the application of the definite rules under the full faith and credit clause would relieve confusion in the law and benefit employer and employee alike, but as far as this single case is concerned, let the interests be balanced!

Tator was injured in California where he was temporarily working on a special errand. From Massachusetts came his salary and expenses, and from there came his orders, which he was generally following at the time of his injury, and from there would and finally did come his orders to return,—to return to the State where he made his contract of employment, where he was a registered voter, where he had his permanent home, and where the laws provided for his exclusive [fol. 53] benefits, which he could have recovered without contest.

#### Jurisdiction in This Case Properly Lies in Massachusetts and Tator is Bound by His Contract

The laws of Massachusetts entered into and became a part of Tator's contract of employment, and that single factor is an important interest of the State of Massachusetts (See Quong Ham Wah vs. Ind. Acc. Com., 184 Cal. 26; Scott vs. White Eagle Oil & Refining Co., 47 F. (2d) 615; Kenner-son vs. Thames Towboat Co., 89 Conn. 367, 94 Atl. 372; Harrick vs. Minn. and St. Louis Ry. Co., 31 Minn. 11, 15 N. W. 48; Hopkins vs. Matchless Metal Polish Co., 99 Conn. 456, 121 Atl. 828). Also the fact that he was a resident of Massachusetts is in and of itself of importance (See Van Blatz Brewing Co. vs. Gerrard, 230 N. W. 622).

The respondent Commission overlooked the reason and purpose behind the decisions in these cases. After all, it is the theory of the workmen's compensation laws that industry most bear the cost of industrial injuries, and it follows that the particular industry which is responsible, is that of the State which has the greatest interest in the employment relationship. Insurance companies are nothing more than service organizations in the collection of funds to meet the responsibility of employer in a particular area. The Commission went far indeed here to disregard the supreme law of the land, and the Supreme Court of the land by offering funds collected in this area to be taken to Mass-[fol. 54] sachusetts by an employee who was, without the slightest question, entitled to his benefits there, in his own home State.

Whether the case be decided on constitutional grounds, on grounds of comity or simply on grounds of good policy and good sense, Tator should have been directed to Massachusetts, where he was to return anyway, to file his claim. The Supreme Court of the United States in the Bradford

case chose the constitutional ground to avoid such a decision as has been rendered here, because the rule as announced, would be less elastic. Law Review articles have already expressed such an opinion.

An intelligent observation is made in 23 Cal. Law Review 381 at the bottom of Page 389, where it is said:

"Thus the court (in the Clapper case) could have decided the case on grounds of comity but the majority of the court departs from the frequently cited doctrine that they will not decide a constitutional question where there are other grounds for the decision. Such a ruling should, therefore, be entitled to a good deal of weight. It has been suggested that it was a conscious effort to impart some uniformity to an important and very confused branch of the conflict of laws, as the court had previously done in insurance cases."

And it is further observed in 46 Harv. Law Rev. 291 at Page 297:

[fol. 55] "In resting his concurring opinion solely upon the ground of comity, Mr. Justice Stone suggested that both acts might be applicable, and that it was for New Hampshire to decide to which she preferred to give effect. Adoption of such a rule by the states has led to considerable confusion; the exact law governing a given injury has been thrown in doubt, and double liability has been a constant threat. The Supreme Court's choice of a single law to control rights and liabilities incident to the employer-employee relationship is thus highly desirable from the standpoint of uniformity. That the choice was deliberate and calculated to achieve this end is indicated by the fact that Mr. Justice Brandeis rested his decision upon a constitutional ground that would compel state conformity, although the case itself could have been decided upon the theory of comity advanced by Mr. Justice Stone." (Italics added.)

The case of Ohio vs. Chattanooga Boiler and Tank Co., 77 L. Ed. 872, affirmed the Bradford case. However, the respondents have erroneously relied upon that case because recovery was allowed in the state where the injury occurred. The facts there were very similar to the facts here, and in the Bradford case, and the statute of the State of employment was substantially the same, but the single [fol. 56] distinguishing point was that the Tennessee Court

had already interpreted their statute not to be an "exclusive" one, and clearly, it could not be held that full faith and credit required greater effect be given the Tennessee statute elsewhere than in the Courts of its own State. In the instant case, however, the Massachusetts Court has definitely held the Massachusetts statute to be exclusive, as pointed out above, and full faith and credit, therefore, requires that it be so recognized.

In Cole vs. Industrial Commission, 187 N. E. 520, Fred Thews was killed during the course of his employment with Nelson J. Cole & Sons in Illinois. The employers resided in Indiana and although they had branches in other places, the headquarters of their contracting firm was in that State. The deceased employee resided in Indiana and worked for his employer there but was sent to Illinois to repair machinery and help load railroad cars in Illinois. The employer was also insured with the Great American Indemnity Company covering their liability to pay compensation in Illinois.

The Indiana Workmen's Compensation Act (Burn's Ann. St. Supp. 1929, Section 9451), provided as follows:

"The rights and remedies herein granted to an employee subject to this Act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or death."

[fol. 57] The Illinois Court reversed their Commission and held that there was no substantial difference between the law and the facts of the Clapper case and principal case. The contract having been entered into in Indiana, the Indiana law was held to prevail and no other remedy was available.

It is submitted that the Clapper case is authority in the instant case just as it was in the Cole case, *supra*, and the Industrial Accident Commission of our State should be similarly directed that the application must, therefore, be dismissed.

Your petitioner has attempted to make these Points and Authorities as brief as possible, and yet at the same time dispose of the respondents' position and the arguments in support thereof, regardless of their real merit.

The question now before your Honorable Court has never been decided previously in this State, and it is submitted that it is of the utmost importance to employee, employers and insurance carriers, and in the interest of uniformity of laws throughout the United States, that you now be heard from. The Alaska Packers case, *supra*, did not cover the question here, because a statute of the Vermont, Indiana, and Massachusetts type was not involved there, and the rule in that case merely affirmed the established right of a State to apply its workmen's compensation laws extraterritorially, and strengthens the admitted right of Massachusetts [fol. 58] to take jurisdiction of Tator's claim, but does not aid the respondents' position.

It is the sincere opinion of this petitioner that the facts have been fairly stated and that the law has been adequately stated, sufficient to dispose of the position of the respondents, and it is, therefore, respectfully submitted that the respondent Commission does not have jurisdiction in this case, and that the laws of Massachusetts were a complete defense to the alleged liability of your petitioner, and those laws must now be granted the full faith and credit that they are entitled to.

Wherefore, it is respectfully submitted for the foregoing reasons, the Findings and Award of the respondent Commission must be annulled.

W. N. Mullen, Attorney for Petitioner. Richard Barry, of Counsel.

[fol. 58½] Receipt of Copy of the within Petition for Hearing is hereby admitted this 7th day of November, 1936.

Everett A. Corten, Attorney for Respondent, Industrial Accident Commission.

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[fols. 59-61] IN SUPREME COURT OF CALIFORNIA, IN BANK

[Title omitted]

ORDER GRANTING PETITION FOR HEARING—Filed November 25, 1936

Petitioner's application to have the above entitled cause heard and determined by this Court, after judgment in the District Court of Appeal of the 1st Appellate District.

Division 2, is Granted, and said cause transferred to this Court for hearing and decision. Let a writ of review issue, returnable before this court in bank, at its courtroom in San Francisco, on Tuesday, January 5, 1937, at ten o'clock A. M.

Dated Nov. 23, 1936.

Waste, Chief Justice. Shenk, Justice, Curtis, Justice. Langdon, Justice. Thompson, Justice. Edmonds, Justice.

[fol. 62] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

No. S. F. 15, 785

[Title omitted]

Return to Writ of Review—Filed April 6, 1937

[fols. 63-65] BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

Claim No. 49516

KENNETH TATOR, Applicant,

vs.

DEWEY AND ALMY CHEMICAL COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY and HARTFORD ACCIDENT AND INDEMNITY COMPANY, Defendants

CERTIFICATION

I, Frank J. Burke, Secretary of the Industrial Accident Commission, hereby certify that the attached is a full, true and correct copy of the record of proceedings had before the Industrial Accident Commission in the above entitled cause.

Attest my hand and the seal of the Industrial Accident Commission of the State of California.

Frank J. Burke, Secretary.

Dated at San Francisco, California, this 21st Day of December, 1936.

(Here follows one photolithograph, side folio 66)



SAN FRANCISCO OFFICE  
THE STATE BUILDING

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL  
INDUSTRIAL ACCIDENT

**APPLICATION FOR ADJUSTMENT**

K. TATOR

APPLICANT

vs.

DEWEY & ALMY CHEMICAL CO.

EMPLOYER

PACIFIC EMPLOYERS INSURANCE CO.

EMPLOYER'S INSURANCE CARRIER

1. K. TATOR

28

NAME OF EMPLOYEE

AGE WHEN INJURED

on October 17

, 1935, at

DATE OF INJURY

by Dewey & Almy Chemical Co.

NAME OF EMPLOYER

as follows: Right hand cut by machinery

EXPLAIN

resulting in Amputation of fingers and

STATE WHAT PARTS OF BODY

2. On said date said employer's insurance carrier was Pacific

3. Injured left work on Oct. 17, 1935, at

4. Last payment of indemnity on None, 1935, at

California  
Industrial Relations  
Commission

(FILE ENDORSEMENT ON REVERSE SIDE)

Filed  
Nov. 4, 1935  
by Frank L. Clark, Secy  
Los Angeles Office  
602 State Building  
AC

ENT OF CLAIM NO. 49516  
JUL. 19, 1935

60 Prospect Road, Oakland

APPLICANT'S ADDRESS

4000 East 8th Street., Oakland

EMPLOYER'S ADDRESS

Russ Building, S. F.

INSURANCE CARRIER'S ADDRESS

, while employed as a chemical engineer,

OCCUPATION AT TIME OF INJURY

Oakland,

California,

CITY, TOWN OR PLACE WHERE INJURY OCCURRED

inained injury arising out of and in the course of the employment,

INJURY WAS RECEIVED

at of hand

WERE INJURED AND SUBSEQUENT RESULTS

Employers Insurance Co.

NAME OF INSURANCE COMPANY

disability continued to Nov. 4, 1935

DATE COULD HAVE RESUMED WORK

medical furnished by employer on , 193

as follows: Right hand cut by machinery

EXPLAIN HOW INJURY WAS RECEIVED

resulting in Amputation of fingers and part of hand

STATE WHAT PARTS OF BODY WERE INJURED AND SUBSEQUENT RESULTS

2. On said date said employer's insurance carrier was Pacific Employers Insurance Co.

NAME OF INSURANCE COMPANY

3. Injured left work on Oct. 17, 1935, and disability continued to Nov. 4, 1935

DATE COULD HAVE RESUMED WORK

4. Last payment of indemnity on None, 193; last medical furnished by employer on None, 193

5. Medical or surgical treatment has been rendered by under treatment by Dr. E. Majors and

Dr. H. Hitchcock

GIVE NAME AND ADDRESS OF ALL DOCTORS WHO TREATED OR EXAMINED, AND STATE BY WHOM FURNISHED

6. The employee's date of birth was maximum earnings and his wages \$ per working days per week

DAY, WEEK OR MONTH

IF BOARD, LODGING, OR OTHER:

\*S WERE FURNISHED BY THE EMPLOYER WITHOUT CHARGE, STATE WHAT AND MARKET VALUE OF EACH

TO BE USED IN DEATH CASES ONLY

7. It is claimed that the deceased left the following named dependent:

NAME	AGE	RELATIONSHIP	ADDRESS
------	-----	--------------	---------

8. A question has arisen with respect to the liability of the employer or insurance carrier, and the general nature of the claim in controversy is: Extent of disability

WHEREFORE, It is requested that a time and place be fixed for hearing and notice given, and that an order or award be made granting such relief as the party or parties may be entitled to.

Dated at San Francisco, Nov. 18, 1935

(Signed) K. Tator

KEITH & CREEDE

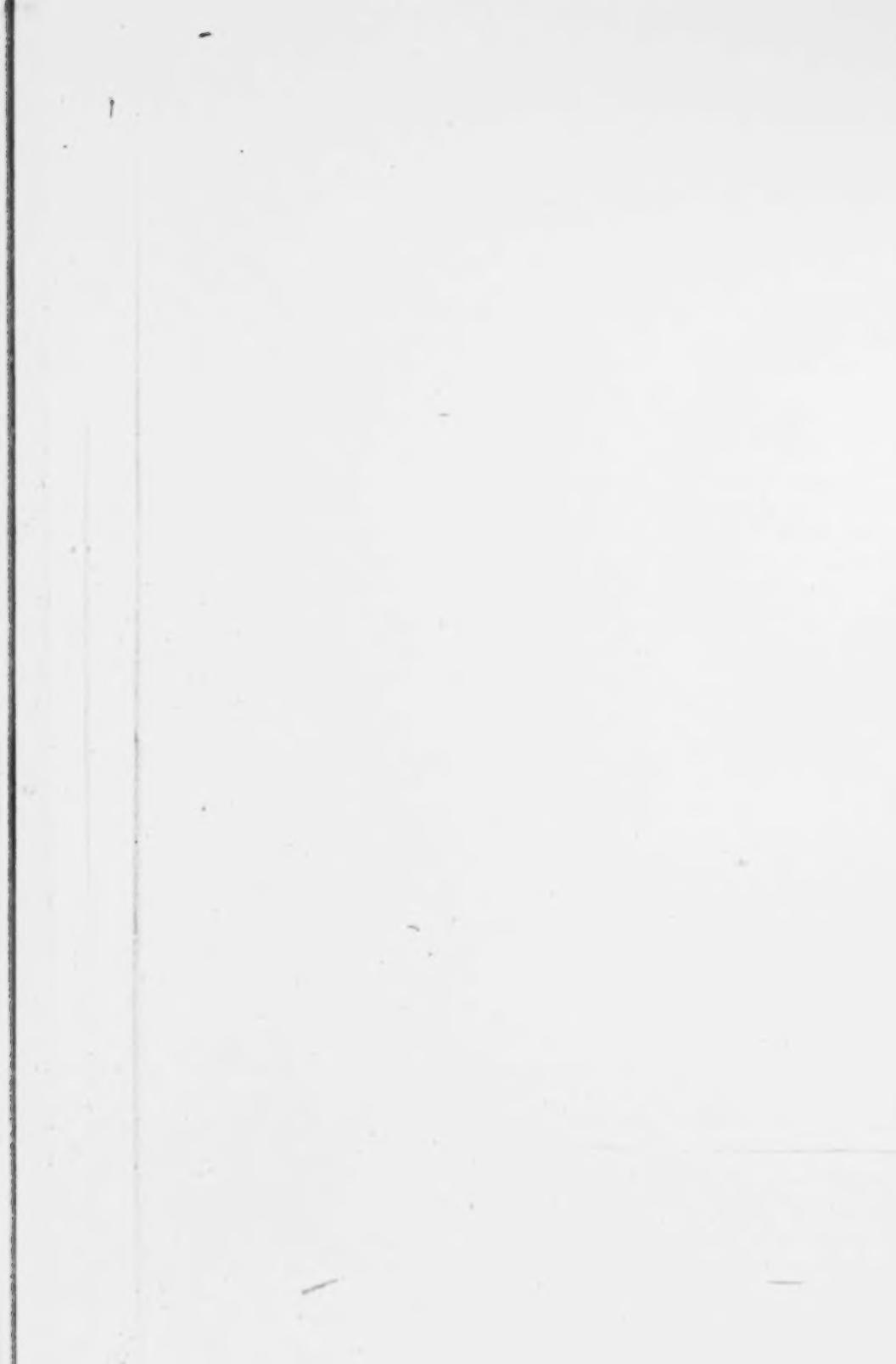
AGENT, OR ATTORNEY FOR APPLICANT

220 Bush Street, S. F.

ADDRESS

SIGNATURE OF APPLICANT OR APPLICANTS

NOTE.—UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION, INSURANCE AND SAFETY LAWS, THE APPLICANT NEED ONLY STATE THE GENERAL NATURE OF THE CLAIM IN CONTROVERSY. WHEN APPLICATION HAS BEEN FILLED OUT AND SIGNED BY APPLICANT IT MUST BE FILED WITH OR MAILED TO THE NEAREST OFFICE OF THE INDUSTRIAL ACCIDENT COMMISSION WITHOUT DELAY. DUE NOTICE WILL THEREAFTER BE GIVEN OF THE TIME AND PLACE OF HEARING. EITHER PARTY MAY BE REPRESENTED IN PERSON, BY ATTORNEY OR OTHER AGENT.



[fol. 67] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

[Title omitted]

ANSWER—Filed November 30, 1935

Comes Now Pacific Employers Insurance Company in answer to application on file herein, dated November 18th, 1935.

In answer to said application, this defendant denies that a policy of workmen's compensation insurance covered the employee or applicant, K. Tator, and further denies that your Honorable Commission has jurisdiction to determine this claim, for the reason that he was an employee of Dewey & Almy Chemical Company in its operations in the State of Massachusetts, and was not covered by the workmen's compensation insurance policy of the Pacific Employers Insurance Company covering the employees of Dewey & Almy Chemical Company in the State of California.

It is further alleged that the applicant is a resident of the State of Massachusetts and entered his employment therein, and not having rejected the extra territorial effect of the Workmen's Compensation Act of the State of Massachusetts, thereby did elect, in the event of injuries sustained by him outside the confines of the State of Massachusetts, to accept the benefits of said State, and such an agreement was a part of his contract to hire.

As a further, separate and distinct defense, defendant Pacific Employers Insurance Company, alleges that the Hartford Indemnity Insurance Company was the compensation insurance carrier for Dewey & Almy Chemical Company, insofar as the applicant, K. Tator, was an employee to the employer, Dewey & Almy Chemical Company.

Wherefore, it is respectfully prayed that the Hartford Indemnity Insurance Company be joined as a party defendant, and further, that this action be dismissed as against the Pacific Employers Insurance Company, for the reason that your Honorable Commission has not jurisdiction to hear the same.

Respectfully submitted, (Signed) W. N. Mullen,  
Attorney for Pacific Employers Insurance Company.

cc. to Keith & Creede, 220 Bush Street—S. F.

[fol. 69] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA  
[Title omitted]

REPORT OF HEARING—Filed December 4, 1935

Be It Remembered that pursuant to orders duly made and entered this matter came on regularly for hearing before the Industrial Accident Commission of the State of California, at its offices, State Building, Civic Center, San Francisco, California, on November 27, 1935, at 2 p. m.

Present: Raymond G. Lindley, Referee. Florence H. Jones, Reporter.

Applicant present in person.

Attorneys for applicant: Keith and Creede, Mr. Frank Creede, appearing.

For Pacific Employers: W. N. Mullen.

For Hartford: L. H. Grunewald.

The following witnesses were duly sworn, and their testimony taken, which is not transcribed at this time:

K. Tator. Arthur D. Angell.

[fol. 70] Case open 15 days for the filing of insurance policy of Hartford covering the defendant employer, it is alleged under the Massachusetts law, and policy of Pacific Employers covering the operations of the employer in California, and for medical reports and medical bills, and 5 days thereafter for Points and Authorities by defendants and 5 days thereafter for answer by applicant, and 5 days thereafter for reply by defendants; submitted 30 days from this date unless further proceedings are requested or initiated by this Commission.

Hearing—Nov. 27, 1935.

[fol. 71] It appearing from the statement of Mr. L. H. Grunewald, representing the Hartford Accident & Indemnity Company that the said company insures the defendant, Dewey & Almy Chemical Company for liability under the Workman's Compensation Act of the State of Massachusetts, it is hereby ordered that Hartford Accident & Indemnity Company be joined as party defendant.

Good cause appearing therefor, the name of the applicant is amended to read: Kenneth Tator.

No stipulations taken.

Issues.—All the material allegations of the application, and, in addition thereto, jurisdiction of the Industrial Accident Commission of the State of California.

[fol. 72] EXCERPTS FROM THE TESTIMONY OF KENNETH TATOR

Page 14, lines 19-22, inclusive :

Mr. Creede :

Q. By whom were you employed on October 17, 1935 ?  
A. The Dewey & Almy Chemical Company.  
Q. In what capacity ?  
A. Chemical engineer.

Page 16, lines 9-20, inclusive :

Mr. Creede :

Q. And you received medical attention that day ?  
A. Yes.  
Q. Any by Dr. Ergo Majors of Oakland ?  
A. Yes.  
Q. And Dr. Hitchcock of Oakland also ?  
A. Yes.  
Q. And who called Dr. Majors ?  
A. Mr. Angell.  
Q. And after that Dr. Majors took care of you ?  
A. Yes.  
Q. And Dr. Majors has not rendered you a bill as yet, has he ?  
A. No.

Page 17, lines 10-24, inclusive :

Mr. Creede :

Q. Now, how long have you been employed by the Dewey & Almy Chemical Company ?

[fol. 73] A. Since January, 1930.

Q. And incidentally you are employed as a chemical engineer ?

A. Chemical Engineer and Research Chemist.

Q. Now, describe for the record the exact duties of a Chemical Engineer and a Research Chemist ?

A. My particular duties ?

Q. And tell me to what extent the type of work you do, and how much you have to use your hands?

A. I would say that eighty per cent of my work is in the Research Laboratory developing new products, and for the use of the hand I handled laboratory testing apparatus, which has a sensitive balance, and graduated viscometers—those are all precision instruments.

Page 21, lines 1-6, inclusive:

Mr. Creede:

Q. And since 1930, have you been living since 1930 in Cambridge, Massachusetts?

A. In Cambridge, Massachusetts.

Q. And you have been employed there by Dewey & Almy Chemical Company?

A. Yes.

Page 21, lines 9-11, inclusive:

Mr. Creede:

Q. And you have remained in Cambridge, Massachusetts, ever since then?

[fol. 74] A. Yes.

Page 21, lines 26, to Page 22, lines 12, inclusive:

Mr. Creede:

Q. Under what circumstances did you come out here to Oakland?

A. Well, the factory was having some difficulty in the manufacture of one of their products, and I was sent out to help work out the solution of that, and find the solution of the trouble and eliminate it.

Q. And you were sent out, you were told to go out by someone at Cambridge, Massachusetts?

A. That is right.

Q. To whom did you report, if anyone, when you arrived?

A. To Mr. Angell.

Q. And who is Mr. Angell: what is his business with the Dewey & Almy Chemical Company?

A. He is the Manager of the Oakland Plant.

Page 24, lines 14-26, inclusive:

Mr. Creede:

Q. And when you went to work, what did the work consist of?

A. My work consisted of those duties I have described before. In the factory and in the laboratory control.

Q. I mean, at the Oakland Plant? Well, that is suggestive. Now, in doing your work, did you go ahead and do anything you wished to, or did you actually take matters [fol. 75] up with Mr. Angell before proceeding?

A. Well, I don't know just what you mean. As far as my working on anything I wanted to, my problem was clear and defined and I had this particular trouble to eliminate, and as far as technical matters were concerned, I was brought out there to solve the thing by my technical knowledge, if I could. Mr. Angell was consulted and advised.

Page 30, lines 3-12, inclusive:

Mr. Creede:

Q. Did you do any other work at the Oakland Factory except working on one particular compound that you had any difficulty with?

A. Well, yes. I don't know whether it is pertinent or not. In the changing of our equipment to overcome the difficulty that we had with this one product, the job I was brought out for, we found that it caused changes in another product that was made on the same equipment, so subsequently I had to modify the changes so it did not effect the other products, the second product.

Page 32, lines 4-17, inclusive:

Mr. Mullen:

Mr. Tator: Well, I don't receive the checks, the checks are deposited in my bank in Cambridge.

Q. Now, how many times have you been out here in California [fol. 76] to work over at the Oakland Plant?

A. This is the second time.

Q. And you came out before to clear up some process that was not just as it should have been before?

A. No, my first visit was more to go around and see customers' plants, and see what specialized conditions our cus-

tomers had that we should know about from the research angle, so that I could go back and know about the requirements for the compound.

Q. Under whose instructions did you make the first trip out to California?

Page 32, line 21 to Page 34, line 20, inclusive:

Mr. Mullen:

Q. About how long ago was that?

A. About thirteen or fourteen months ago.

Q. And who sent you out on that occasion?

A. Well, I was sent out by a Conference at the time, in which the President of the Company and the General Manager of the Company were involved under the Director of Research.

Q. And that was back in Cambridge?

A. Correct.

Q. And there is a Director of Research of the Company, is there?

A. Yes, there is.

Q. Are you the Director?

[fol. 77] A. No.

Q. The Director of Research is over you?

A. Yes, that is right.

Q. Now, what was the occasion for your coming out to California here this last September?

A. The occasion was the difficulty in the manufacture of one of our products, and I was sent out to help correct that trouble.

Q. Now, who advised you of the difficulty?

A. Well, the first I learned of the difficulty was from letters from Mr. Piez out here. We did not realize just how urgent it was to get the difficulty corrected, because we found out that one of our customers who is vitally concerned in the correction of this difficulty in New York, and he was going to decide while he was there whether he could continue with this product or not, and it was very vital that the trouble be eliminated while he was in New York, and he was notified and Mr. Ferguson our General Manager in Cambridge sent me out here.

Q. And did Mr. Ferguson tell you what he wanted you to do when you got out here?

A. He told me he wanted me to correct the difficulty.

Q. And who paid your fare out here?

A. The company.

Q. Now, you say that since you have been out here you [fol. 78] have not received any pay checks, because they have been deposited in the bank back at Cambridge?

A. Yes.

Q. And have you received advice that since you have been here that the office in Cambridge has deposited your checks with the bank?

A. Well, I have received the deposit slip from the bank, and my salary has been deposited.

Q. Now, while you were out here who paid your expenses, your living expenses?

A. Well, I had an advance from the company when I came out here and I have been living on that advance up until about three weeks ago. Since that time I have had another advance from the company at Oakland.

Page 35, lines 4-6, inclusive:

Mr. Mullen:

Q. And you are to account for these advances are you not to the Home Office?

A. Yes.

Page 36, lines 5-7, inclusive:

Mr. Tator: When I found the trouble and rectified it, I was to await orders from, I was to notify Cambridge and await orders.

Page 38, lines 9-25, inclusive:

A. Prior to this injury to the best of my knowledge I had not notified my employers that I would reject the benefits [fol. 79] of the Massachusetts Act.

Referee:

Q. For injuries occurring outside the State of Massachusetts, is that correct?

A. Yes.

Q. Did you ever notify the Industrial Commission of Massachusetts to that effect?

A. No, I have not.

**Mr. Mullen:**

Q. When you entered the employ of the Dewey & Almy Chemical Company in Massachusetts, did you notify or give notice to your employer that you claim and would not waive your common law rights or any other rights you might have under the law of any other jurisdiction for compensation or injuries in connection with your employment?

Page 39, lines 1-2, inclusive:

Mr. Tator: Not knowing what it is all about, I could not have very well done anything about it.

Page 42, lines 10-15, inclusive:

**Mr. Mullen:**

Q. When you entered your contract of hire with Dewey & Almy Company, did you notify them if you were injured while working you wanted them to understand that you were not giving up any rights that you might have under the Common Law of Massachusetts or the law of any other jurisdiction?

A. Well, I do not believe I did.

[fol. 80] Page 42, lines 24-25, inclusive:

**Referee:**

Q. As far as you remember?

A. As far as I remember it did not.

Page 43, lines 17-18, inclusive:

**Mr. Mullen:**

Q. You don't remember giving any such notice to your employer?

A. No.

Page 50, line 13 to page 51, line 2, inclusive:

**Mr. Mullen:**

Q. When you left Cambridge to come out here it was your understanding was it not, that you would rectify this condition out here and would return to Cambridge and take up your work?

A. I was instructed to rectify this condition and I wired to Cambridge I was finished and waited until I received an answer or further instructions.

Q. Do you know what was anticipated by the further instructions?

A. No, just any situation that may have developed on the coast that I might be able to take care of.

Q. In other words, going to visit some customers, on your way home?

A. Yes.

Q. You did not leave Cambridge to leave there permanently, you came out here to do this job and maybe something incidental and then return to Cambridge?

A. Well, there was no thought of staying out here permanently.

Page 65, line 21, to page 66 line 9 (insert here).

Page 87, lines 11-13, inclusive;

Referee:

Q. Did you register or are you registered for voting in Massachusetts?

A. Yes.

Page 91, lines 1-6, inclusive:

Mr. Mullen:

Q. And you have not done anything to definitely waive any benefits you might have in the State of Massachusetts either, have you?

A. Not to my knowledge.

Q. And you still consider yourself a citizen of the Commonwealth of Massachusetts?

Page 91, lines 13-18, inclusive:

Mr. Tator: Well, I vote in Massachusetts and I conform to the laws of Massachusetts, or try to, and in that sense I consider myself a citizen of Massachusetts, but if my employment, however, should move to some other state I would go to that other state if I was required to go and consider myself a citizen of that other state.

[fol. 82] EXCERPTS FROM THE TESTIMONY OF ARTHUR D.  
ANGELL

Page 65, line 21 to page 66 line 9, inclusive:

Mr. Mullen:

Q. The first you knew he was coming out here was when you received advice from Mr. Ferguson?

A. Yes.

Q. And that advice told you the purpose of his visit?

A. Yes.

Q. He was not coming out here to be a steady employee of the Oakland Branch of the plant?

A. No.

Q. Now do you know where Mr. Tator's payroll was carried?

A. Cambridge.

Q. And his expense account was carried here?

A. That is true.

Q. At Cambridge, his general expense account?

A. He has an advance from us, but the main general expense account is maintained at Cambridge.

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[fol. 83] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

[Title omitted]

FINDINGS AND AWARD—Filed April 25, 1936

Applicant's attorneys: Keith & Creede, Mr. Frank Creede appearing.

For Pacific Employers Insurance Co., W. N. Mullen.

For Hartford Accident & Indemnity Co., L. H. Grunewald.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly heard before Raymond G. Lindley, Referee, and submitted for decision, said Referee makes his Findings and Award as follows:

### Findings of Fact

1. Kenneth Tator, applicant, while employed as a chemical engineer at Oakland, California, on October 17, 1935, by the Pacific factory of the Dewey and Almy Chemical Company, a Massachusetts corporation, sustained injury occurring in the course of and arising out of his aforesaid employment as follows: His right major hand became caught in a piece of machinery and run through cog-wheels. At said time the aforesaid employer's insurance Carrier for liability under the California Workmen's Compensation, Insurance and Safety Act of 1917 was the Pacific Employers [fol. 84] Insurance Company, and both the said employer and the said employee were then and there subject to the provisions of the said Act.

2. The applicant was a chemical engineer, 28 years of age, and said injury caused permanent disability as follows: Loss of major index, middle, ring and little fingers, including palm of hand and several metacarpal bones. The percentage of said permanent disability is 42 $\frac{1}{4}$ , entitling the applicant to \$25.00 a week for 169 weeks, amounting to the total sum of \$4,225. Amount accrued to and including April 16, 1936, (25 weeks) amounting to \$625, none of which has been paid. The foregoing disability indemnity is based upon wages entitling the applicant to the maximum disability indemnity under the said Act.

3. The defendant insurance carrier herein neglected to provide the medical treatment reasonably required by the said injury and are chargeable with the applicant's reasonable medical expenses necessitated by said injury in the following amounts and payable directly to the following parties:

To Dr. N. Austin Cary, Oakland, California, the sum of \$12.50 as a consultant's fee;

To Dr. J. Scott Quigley, Oakland, California, the sum of \$12.50 as assistant surgeon's fee;

To Dr. Ergo A. Majors the sum of \$204.50 surgeon's fee;

The Peralta Hospital, Oakland, California, the sum of \$137.04 as hospitalization expense;

To Dewey & Almy Chemical Co., Oakland, California, defendant employer, the sum of \$128.50 reimbursement for nurses' fees paid by said employer to the nurses who at- [fol. 85] tended the applicant.

4. The evidence establishes that further surgical treatment is reasonably required to relieve the applicant from the effects of his said injury, and it is the legal duty of the defendant insurance carrier to provide such treatment without cost to the applicant, and in the event of their refusal or neglect to seasonably provide said treatment they will be chargeable therewith and a supplemental award therefor will be issued by this Commission upon application of any party in interest, providing said application be made within 245 weeks from and after October 17, 1935.

5. The Hartford Accident & Indemnity Company was not the insurance carrier of the hereinbefore mentioned employer for liability under the hereinbefore mentioned Act and are entitled to be dismissed and discharged from all liability herein.

6. The law firm of Keith & Creede are entitled to a lien against the compensation herein awarded in the sum of \$225 as and for the reasonable value of their services to the applicant in the within matter.

#### Award

Now, Therefore, in accordance with the foregoing Findings,

Award is Made in favor of Kenneth Tator, applicant, against Pacific Employers Insurance Company, defendant insurance carrier, of the sum of \$1,120.04 disability indemnity accrued to and including April 16, 1936, and medical [fol. 86] expenses payable forthwith and as follows:

To Kenneth Tator, applicant, the sum of \$625 disability indemnity accrued to and including April 16, 1936, less the sum of \$225 payable to the law firm of Keith & Creede as attorney's fee;

To Dr. N. Austin Cary, Oakland, California, the sum of \$12.50;

To Dr. J. Scott Quigley, Oakland, California, the sum of \$12.50;

To Dr. Ergo A. Majors, Oakland, California, the sum of \$204.50;

To Peralta Hospital, Oakland, California, the sum of \$137.04;

To Dewey & Almy Chemical Co., Oakland, California, the sum of \$128.50 reimbursement for nurses fees paid by them.

**Award is Further Made in favor of Kenneth Tator, applicant, against Pacific Employers Insurance Company, defendant insurance carrier, of the sum of \$25.00 weekly beginning April 17, 1936, and continuing until the sum of \$3,600 shall have been paid.**

**It is Hereby Ordered that the Pacific Employers Insurance Company, defendant insurance carrier, provide the applicant with such medical or surgical treatment as may be required to relieve him of the effects of his industrial injury of October 17, 1935.**

**It is Hereby Further Ordered that Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation, defendant employer herein, be and it hereby is [fol. 87] dismissed and discharged from all liability herein.**

**It is Hereby Further Ordered that the Hartford Accident and Indemnity Company be and it hereby is dismissed and discharged from all liability herein.**

(Signed) Raymond G. Lindley, Referee, Industrial Accident Commission of the State of California.

The foregoing decision made by Raymond G. Lindley, Referee, was approved, ratified, confirmed, ordered filed and made the decision of the Industrial Accident Commission on April 25, 1936.

(Signed) Frank J. Burke, Secretary.

RGL:AM.

49516.

IF.

[fol. 88] [File endorsement omitted]

**BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA**

[Title omitted]

**PETITION FOR REHEARING—Filed May 14, 1936**

Comes Now Pacific Employers Insurance Company with its Petition for Rehearing on Findings and Award, dated April 25th, 1936.

Petitioner bases this Petition for Rehearing on the following grounds, to wit:

1. That the evidence does not justify the findings of fact;
2. That the findings of fact do not support the award;

3. That the award is unreasonable;
4. That the Commission acted without and in excess of its powers.

#### Tator Was Not Employed by the Oakland Factory of The Employer

Your petitioner admits that Tator was injured while employed by the Dewey Almy Company as a chemical engineer [fol. 89] while working at the Pacific Coast factory of his employer.

Your Honorable Commission, however, went beyond the evidence and found he was employed by the Pacific Coast factory of his employer.

The distinction which arises when the preposition by is used in place of the preposition at is not based on any mere technicality but on a substantial issue of this case.

Tator entered into his contract of employment in Massachusetts and was employed by the employer in that state. No new contract of employment was ever made when Tator arrived on the Pacific Coast. There was never more than one employment and that was taken care of before he was sent on his special errand to the branch factory. He was sent by his employer to perform a designated service and he was then to return to Massachusetts, his usual place of employment.

The finding that he was employed by the Pacific Coast Branch is unsupported by anything in the record and serves only as an attempt to sidestep the real issue of law which is involved in this case.

It is more than evident your Commission has digressed from the apparent opinion of the Referee and now admits that under the Massachusetts law, the applicant could have no claim in California unless he was a California employee. The finding he was employed by the Pacific Coast branch is merely put into defeat the effect of the law. Should we say a means was constructed out of nothing to accomplish an end?

[fol. 90] In such a case as this, where the rights of several states are involved and a constitutional question arises it is of the greatest importance that the findings be clear-cut and the issues frankly faced before an attempt is made to apply the law which is necessarily complex.

The facts of this case not only conclusively show that Tator was employed by his employer in Massachusetts, but also that practically all of the important incidents of his employment continued thereafter, to exist in Massachusetts and not in California, giving the former state a greater interest in this case.

These incidents of employment are as follows: (1) He was hired in Massachusetts by his employer there. (2) He would be fired by persons at the head office and not here—they had the final authority. This point is established by his own testimony and that of the Pacific Coast manager. (3) His salary was paid from the head office, and although part of it may have been charged against the expenses of the Pacific Coast branch, portions of the salaries of Mr. Tator and executives in the east were regularly charged against the Pacific Coast branch as a matter of bookkeeping and whether they were in California or not. (4) His expense money came from Massachusetts. (5) His home was in Massachusetts, as was that of his employer. (6) He was at all times a registered voter as well as a resident of Massachusetts. (7) He was under control of the officers in Massachusetts and received his instructions from them as to the particular job he was to do in California and [fol. 91] what he was to do on the completion thereof.

It was a part of his job to go to various states as a service man and to visit the various factories of his employer. Did he become an employee of the employer in every state he performed a service? The record shows, just before coming to California, the applicant was in New York on business for his employer and by wire instructed to come to California by airplane to remedy a situation that existed here. Would it be said he was a New York employee had he been injured there?

Tator never left the control of the Massachusetts office and at the time of his injury was following directions given him by the Massachusetts plant before he ever started to California. In the usual case, of course, the employee can recover in his home state where he is employed or he can recover in the state where he is injured. But this is not the usual case because we have the laws of Massachusetts to consider and if we fail to recognize them, we are going beyond the jurisdiction of our own state.

Certainly, Tator was not an employee of the Pacific Coast branch as he traveled to and from California. If this be

true, and we say the conclusion cannot be escaped, then we ask, how can it be said he was a California employee when injured? The location at the time of injury may determine a right, but it does not change the contract of hire. When he finished his assignment in California, no one here told him what to do. He awaited advices as to whether he was [fol. 92] to visit customers on the way home or return direct and he was ordered to return direct. If he was a California employee, why did he have to await instructions from Massachusetts? Also, it was Mr. Tator's testimony he was sent west by his Massachusetts superiors. We defy your Commission to point to one scintilla of evidence to support the finding that Mr. Tator ever entered into a contract of hire with the Pacific Coast branch. He testified clearly he was working under and because of his contract of employment entered into in Massachusetts.

#### Comity

It has already been pointed out wherein the State of Massachusetts has a greater interest in this case than has the State of California. There is no question but that Tator would be privileged to have his rights adjudicated in his home state, and your Commission has so admitted.

At the hearing, the Referee told him he could elect to receive benefits under either California or Massachusetts, and he stated he elected to take those of California. Certainly, the right to elect must be based on the fact he was a Massachusetts employee. He presented his claim on this theory and now your Commission says he had no right to elect and if he gets any compensation benefits, they must be under the California law. He could not have the right of election unless he was employed in one state and injured in another.

Your Commission did not dare find he was a Massachusetts employee and claimed California benefits because—[fol. 93] injured here, and we submit the Findings and Award does not support the theory and contention of the applicant. He said he was a Massachusetts employee. Therefore, to obtain and show jurisdiction, your Commission should have found he was a Massachusetts employee and had elected to take California benefits. He definitely testified he was an employee of the Massachusetts office and elected to take California benefits. Any award based

on the findings to the contrary, does not support the contention of the applicant.

Massachusetts has announced the fact that she has jurisdiction no matter where the injury occurs and that such jurisdiction is exclusive if the employee does not give written notice to the employee, in accordance with the terms of the statute.

Your petitioner submits that it is not for your Honorable Commission to question such a statute or the Massachusetts cases which interpret and support it. It is no concern of a California tribunal that the laws of our state offer a higher compensation rate than those of Massachusetts and unfortunate as Mr. Tator's injury may have been, sympathy should play no part here, as there is no logical or legal reason why this applicant should be offered the machinery of our courts and the generosity of our law before he returns, as he has returned, to his home state, where compensation benefits would otherwise be forthcoming.

In the Estate of Henning, 128 Cal. at p. 220, the Supreme [fol. 94] Court said, "The parties in interest may have the assurance that our courts will be governed by the enlightened spirit of comity, which should prevail between sister states of the Union, subject to such legislative restrictions as our statutes impose and agreeably to establish rules of law". Certainly, the Findings and Award of this case do not offer evidence of that enlightened spirit of which this state may well be proud.

Although rules of comity have no doubt been violated, the award in this case raises a more serious question, it being your petitioner's contention that the Full Faith and Credit clause has likewise been violated. As it is felt that this contention is well supported by decisions of the United States Supreme Court it is, therefore, submitted that "there is no avenue of escape from the paramount authority of the Federal Constitution."

#### Full Faith and Credit

Section 24 of Chapter 152 of the Annotated Laws of Massachusetts, in substance, provides that an employee is deemed to have waived his common law rights and also his rights under the law of any other jurisdiction at the time of his employment in Massachusetts, unless he gives notice to his employer, at the time the contract of hire is made, that he claims such other rights.

Section 26 provides that if the above notice is not given and the person received an injury arising out of and in the course of his employment, he shall be paid Massachusetts compensation benefits. [fol. 95]

For a complete text of these sections, your petitioner refers to its Points and Authorities on file with your Commission.

Obviously, Sections 26 and 24 must be read together. They refer to compensation benefits otherwise recoverable in other states and as to such benefits, they make their own act an exclusive remedy in cases where the employment status originated in their state. The law thus becomes an integral part of the contract of hire.

The right of one state to say that an employee who enters into a contract of hire in its state, shall have the right to recover compensation in that state alone and no other—no matter where the injury occurs, cannot be questioned here. The United States Supreme Court recognized such a right in the case of Bradford Electric Light Co. v. Clapper, 286 U. S. 145, and held that the law which created such a right, was a defense against recovery in other states and full faith and credit must be given such a law.

The Clapper case, as was pointed out in 23 Cal. Law Rev. at p. 390, is entitled to a great deal of weight because the court departed from the doctrine that they will not decide a constitutional issue where there are other grounds for decision, and instead of basing its decision on the ground of comity, they applied the full faith and credit clause. The reason for the departure from the usual doctrine is said to [fol. 96] be that it was a conscious effort to impart some uniformity to an important and very confused branch of the conflict of laws.

The case at bar, it is submitted, is directly in point with the Clapper case and the same rules, therefore, apply.

The case of Alaska Packers' Association v. I. A. C. 55 Sup. Ct. 518, affirmed the rule laid down in the Clapper case. In that case, California exercised its extra-territorial jurisdiction and allowed recovery here for an injury which occurred elsewhere. Regardless of the full faith and credit clause, where the precise complement in facts is presented, as is here the case, California should attempt to relieve confusion by being consistent and apply the exact complement of rules of law.

The Alaska Packers' opinion discusses the question of public policy and points out the importance of "greater interest" as between the states in regard to the particular employment involved. It has already been shown, in this petition, that Massachusetts, unquestionably, has a greater interest in the case than California. However, it should be pointed out here that your petitioner believes Justice Stone to have been in error in attempting to qualify the Clapper rule (in which case he wrote a separate opinion), by speaking of declarations of state courts of their local public policy. The full faith and credit clause is an absolute constitutional restriction upon states' rights and cannot be limited by local declarations. Justice Stone dissented to the application of the full faith and credit clause in the Clapper case, but it [fol. 97] was applied by the court and remains the law and should be applied here.

Furthermore, although practically all of the incidents of the employment relationship were located in Massachusetts, the question of interest is not pertinent for the reason that the law of the place of contract of hire governs the contract of employment. There was a requirement in Tator's contract that he waived his right to claim compensation for a compensable injury received outside the commonwealth, the law of Massachusetts having become a part of such contract.

Tator's right to be where he was depended upon his contract entered into in Massachusetts, and his right against his employer for compensation must necessarily flow from his contract of employment, for without it he would not have been in California. If the contract of employment specified, as it did here, by a positive act of law, that he could only receive compensation benefits under the laws of Massachusetts, then if California grants compensation to Mr. Tator, it will cast aside one of the essential terms of the contract, provided by a positive law of Massachusetts, and in casting aside the laws of Massachusetts, would deny full faith and credit to those laws. Therefore, any such action on the part of your Commission would be contrary to your jurisdiction and unconstitutional.

An argument has been made that the Massachusetts Act only excludes common law recovery of damages in other states and not statutory recovery of compensation. That such an argument is untenable, is obvious upon a reading of [fol. 98] sections 24 and 26, which must be read together.

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Section 26 provides that if a man receives a compensable injury and had waived his rights, as provided by the Act, even though he is injured outside the commonwealth, he can only claim Massachusetts benefits. This could refer to nothing else than compensation benefits.

In McLaughlin's Case, 174 N. E. 338, the court refused to hold that a recovery of compensation benefits by agreement elsewhere a defense to a recovery in their state. A release to compensation rights had been signed in New Hampshire and the Massachusetts court said that the employee was not bound by the release because his rights to compensation, under the circumstances, were controlled by the laws of Massachusetts and not New Hampshire. The court also held that the Massachusetts law was a part of the employment contract and plainly said that if the right under the Act were to be waived, the waiver must be in accordance with the statute. The case dealt specifically with compensation rights and not damages in lieu of compensation. Therefore, no contention can be validly made that the waiver under the statute refers to damages alone, as the Massachusetts court has interpreted the statute and has spoken with authority not to be questioned by a California tribunal.

Also, any argument that the Massachusetts law did not become a part of the contract of hire must necessarily fail because of language in McLaughlin's case and in other Massachusetts cases cited in your petitioner's Points and Authorities and Reply Brief on file in this case. In McLaughlin's case, the court said:

[fol. 99] "No principle of law is defeated by attaching to such contracts (under the Workmen's Compensation Act), the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state."

In Migne's case, 183 N. E. 847, which bears out the above conclusion, the court said:

"Massachusetts has assumed exclusive jurisdiction of rights to compensation when the contract of employment is made here, and no notice in writing of claim of rights is given".

In that case the Court, in holding that their statute was intended to be exclusive, and to exclude proceedings in other states with reference to compensation, where the contract

of hire was entered into in Massachusetts, cited the case of Bradford Electric Light Co. v. Clapper, 284 U. S. 221 and 286 U. S. 145, to sustain their position and to announce to other states that they will not recognize proceedings elsewhere and in effect, ask that their statute be given the full faith and credit that it is entitled to under the Clapper decision.

It was natural for the Massachusetts courts to hold that the statute was meant to be exclusive in that it specifically says that unless the required notice is given, rights to recover compensation elsewhere are thereby waived. Certainly, there is no difference between saying that a person's rights are waived elsewhere and necessarily leaving him the single remedy in the state where his contract was made and saying the rights in a particular state are exclusive. If [fol. 100] other laws are excluded, the Act is, of course, exclusive. The Act could lend itself to no other interpretation.

In Bradford Electric Light Co. v. Clapper, 286 U. S. 145, the employee Clapper was a resident of Vermont and was employed mainly in Vermont by the defendant, a Vermont corporation. He was killed in the cause of his employment on an emergency repair job in New Hampshire.

Thus do the facts in that case present an exact parallel to the case at bar.

The statute involved there was the Vermont Act, which is substantially the same as the Massachusetts Act involved in the instant case. The Vermont Act provided that if the employer and employee did not object to it in the manner provided, they became bound by it. It provided, in the case of an injury outside of the state, the Act provided the exclusive remedy.

The United States Supreme Court reversed the District Court and the Circuit Court of Appeals (the case being in Federal Courts because of diversity of citizenship) and held that it was a denial of full faith and credit to refuse to allow the Vermont Act to be set up as a defense to an action in New Hampshire by Clapper's ministratrix under the New Hampshire death statute.

The court there did not go so far as to hold that the Vermont Act would have to be enforced by other states if repugnant to the public policy of such states, but it did hold that the full faith and credit clause required that it be [fol. 101] recognized if set up as a defense.

So just as the applicant was relegated to his rights under the Vermont Act in that case, so should Tator be referred to Massachusetts for his benefits in the case at bar. The Clapp decision is controlling, and by direction of our United States Supreme Court, the State of California, through your Honorable Commission, must deny it has jurisdiction of this case and give full faith and credit to the Massachusetts Act.

Wherefore, it is hereby submitted there is no evidence to support the finding Mr. Tator was an employee of the Pacific Coast branch of the Dewey & Almy Chemical Company, the Massachusetts Courts have held its compensation law is an exclusive statute, that the United States Supreme Court has held that such a statute is entitled to full faith and credit, and that other states should follow a hands off policy, or render an unconstitutional judgment, and so this applicant's claim should be denied and your petitioner dismissed from liability.

Respectfully submitted, (Signed) W. N. Mullen, Attorney for Pacific Employers Insurance Company.

cc. to Keith & Creede, Mills Tower—S. F.

cc. to Hartford Accident & Indemnity Company, 720 California Street—S. F.

[fol. 102] *Duly sworn to by W. N. Mullen. Jurat omitted in printing.*

[fol. 103] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

[Title omitted]

ORDER DENYING REHEARING—Filed June 30, 1936

Good Cause Appearing Therefor:

It is Ordered That defendant Pacific Employers Insurance Company's petition for rehearing, filed herein May 14, 1936, be and the same hereby is denied.

Industrial Accident Commission of the State of California. (Signed) Frank MacDonald, Commissioner. (Signed) Frank J. Burke, Deputy Commissioner. (Seal.)

Dated at San Francisco, California, this 30th day of June, 1936.

[fols. 104-106] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA, IN BANK

[Title omitted]

ORDER VACATING SUBMISSION—Filed July 30, 1937

By the COURT:

Good cause appearing therefor, it is ordered that the submission heretofore entered herein is hereby vacated and set aside and the matter placed on the San Francisco October, 1937, bank calendar for further argument and consideration.

The attention of counsel is specifically directed to a consideration of the following proposition:

“Assuming that the Massachusetts statute, as interpreted by its courts, exclusively governs liability for the industrial injury involved in this case, are there any facts in the record which establish a sufficient governmental interest in the State of California, to warrant the taking of jurisdiction and the making of an award of compensation? In this connection counsel are requested to consider particularly the effect of the decision in Alaska Packers Assn. v. Industrial Accident Commission, 294 U. S. 532.”

Seawell, Acting Chief Justice.

Dated July 30, 1937.

[fol. 107] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENTS AND ON BEHALF OF CERTAIN PHYSICIANS WHO RENDERED MEDICAL SERVICES TO RESPONDENT, TATOR—Filed October 13, 1937

Interest of Drs. Cary, Quigley and Majors

We are grateful for the permission accorded to file a brief in support of the position of respondents, Industrial.

Accident Commission of the State of California and Kenneth Tator.

The petition of Pacific Employers Insurance Company for a hearing by this Court following the denial of a petition for writ of review by the District Court of Appeal, First Appellate District, Division Two, seeks to have this Court annul an award of the Industrial Accident Commission in favor of Kenneth Tator and in favor of the following persons, who furnished medical, hospital and nursing services respectively to Kenneth Tator immediately following his injury: Dr. N. Austin Cary, Dr. J. Scott Quigley, Dr. Ergo A. Majors, Peralta Hospital and Dewey & Almy Chemical Co., Tator's employer, which paid nurses' fees incurred.

The essential facts have been completely set forth in the [fol. 108] petition for hearing and in respondent Kenneth Tator's answer thereto. Therefore, we will not indulge in a reiteration of all of the facts, but will merely summarize briefly in order to clarify the interest of the physicians upon whose behalf this memorandum is submitted. Tator, an employee of the Dewey & Almy Chemical Co., was sent by his employer from Massachusetts, the state in which his contract of employment was made, to California to perform certain duties at the Oakland plant of the Dewey & Almy Chemical Co. While in Oakland, he was injured necessitating immediate medical, hospital and nursing care. The Dewey & Almy Chemical Co. carried a workmen's compensation insurance policy with petitioner, Pacific Employers Insurance Company, insuring it with respect to awards made under the California Workmen's Compensation and Insurance Safety Act. Tator applied to the respondent, Industrial Accident Commission of the State of California, for compensation. The Pacific Employers Insurance Company opposed the award of compensation upon the specific ground that the Massachusetts Workmen's Compensation Act is exclusive in nature and that, therefore, Tator (and, of course, the physicians, hospitals and nurses who performed services for his benefit) must be required to proceed in Massachusetts rather than in California.

It is our belief that judicial approval of the position taken by petitioner would result in serious inconvenience and in many instances in unjust deprival of all compensation to [fol. 109] those members of the medical and nursing professions and those hospitals which in the future may render

services to employees injured in California and whose contracts of employment were made outside of the state. This is a matter of vital importance to the medical profession in general and to the members of the California Medical Association, represented by counsel for Drs. Cary, Quigley and Majors in particular. In the instant case, of course, it is a matter of extreme importance to the particular physicians who performed services and whose remuneration must in the nature of things depend to a great extent upon the validity of the award of the Industrial Accident Commission. It may be noted that the Statute of Limitations now bars compensation under the Massachusetts statutes (Secs. 40, 41, 44 and 49, Chap. 152, Mass. Gen'l. Laws, as amended).

### The Question Involved

On July 30, 1937, this Court propounded the following question to counsel for petitioner and respondents: "Assuming that the Massachusetts statute, as interpreted by its Courts, exclusively governs liability for the industrial injury involved in this case, are there any facts in the record which establish a sufficient governmental interest in the State of California, to warrant the taking of jurisdiction and the making of an award of compensation? In this connection counsel are requested to consider particularly the effect of the decision in *Alaska Packers Assn. v. Industrial Accident Commission*, 294 U. S. 532."

The problem presented in this case is merely whether or not California must refrain from enforcing its Compensation Act for an injury occurring in this state because of a conflict between the California statute and the Massachusetts statute. It is conceded that the employee might prosecute his right under the Massachusetts statute in Massachusetts and that he likewise might prosecute his claim in California under the California statute, unless the Massachusetts statute estops him from doing so.

There is admittedly a direct conflict between the two statutes in that the Massachusetts statute not only gives him a right of action in Massachusetts for the injury suffered in California but further purports specifically to prevent him from prosecuting a claim in California under the California Act.

Hence, the question to be determined is necessarily this: Must these provisions of the Massachusetts Act, under the full faith and credit clause of the Constitution of the United States, be accepted as binding in California even though California is thereby rendered unable to take jurisdiction under its own statute, or must the California statutes prevail?

This point has been specifically covered by the United States Supreme Court in the case of

Alaska Packers Asso. v. Ind. Acc. Com., 294 U. S. 532, 79 L. Ed. 1044.

[fol. 111] In that case the Court recognized a direct conflict between the statute of California and the statute of Alaska. If full faith and credit was given to the Alaska Act, California could not, under its statute, have awarded benefits to the employee. The exact situation prevails here. If California is to give full faith and credit to the Massachusetts statute, it is precluded from enforcing its own statute. In determining the scope of the full faith and credit clause in this kind of a situation, the United States Supreme Court stated:

"A rigid and literal enforcement of the full faith and credit clause, without, regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. See *Olmsted v. Olmsted*, 216 U. S. 386, 54 L. Ed. 530, 30 S. Ct. 292, 25 L. R. A. (N. S.) 1192; *Aetna L. Ins. Co. v. Dunken*, *supra* (266 U. S. 393, 69 L. Ed. 346, 45 S. Ct. 129).

\* \* \* In either case, the conflict is the same. In each, rights claimed under one statute prevail *only by denying effect to the other*. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight. \* \* \* It follows that not every statute of another state will override

a conflicting statute of the forum by virtue of the full faith and credit clause; that the statute of a state may sometimes [fol. 112] override the conflicting statute of another, both at home and abroad; and, again, that the two conflicting statutes may each prevail over the other at home, although given no extraterritorial effect in the state of the other."

If it is recognized, and it must be, that in either case, regardless of whatever differences in detail may exist between the wording of the Massachusetts statute and the Alaska Act, the two statutes here concerned, viz.: Massachusetts and California, are mutually exclusive, then, no matter how stringent or exclusive the Massachusetts statute purports to be no greater force and effect is added to it by the presence of additional language in so far as the full faith and credit clause is concerned. This is necessarily true because in the opinion in the Alaska Packers case, the Supreme Court of the United States recognized the fact that a statute which merely projects itself into another state is as much in conflict with the statute of the second state as is a statute which not only projects itself into the second state, but assumes specifically to deny to the second state its right to enforce its own statutes within its borders. In either case the conflict is resolved by weighing the governmental interests of the two conflicting states.

Thus, in the instant case the single problem involved is that of weighing the governmental interests of California as opposed to those of Massachusetts.

It is assumed for the purposes of this memorandum that the Massachusetts statute, as interpreted, purports exclusively to govern liability for all injuries to employees no matter where the particular employment status may be or the injury occur.

**The State of California Has a Definite Social and Governmental Interest in Protecting Its Citizens Who in Good Faith Perform Services Pursuant to the California Workmen's Compensation Act**

Physicians do not as a general rule have personal knowledge of specific legal refinements. A physician does not, and for the welfare of the people should not, pause before performing professional services to seek legal advice with respect to the possibility of his obtaining compensation from

his patient after the services are rendered. The physician acts first and then tries to solve the problem of earning a livelihood afterward. Therefore, although physicians in general understand that there is a Workmen's Compensation Act and that if they perform professional services in an industrial case their compensation may be measured by and collected through a future award of the Industrial Accident Commission, they do not understand and cannot be expected to follow the fine technical points pursuant to which the Court may have held a particular class of industrial injury to be non-compensable in this state. If it is decided that an employee injured in California in the course of his employment is not entitled to compensation in this state the inevitable result will be that in practically all cases falling within this classification physicians will continue to render [fol. 114] their services under the assumption that because it is an industrial injury compensation will be forthcoming. If an award must be made in another state with respect to the employee, it necessarily follows that the physicians who render services in connection with his injury must also seek reimbursement elsewhere.<sup>1</sup> In most cases this would mean no compensation at all. Time, unfamiliarity with the laws of other states, lack of knowledge of the fact that proceedings elsewhere are necessary and many other factors would inevitably combine to defeat recovery. This probability is a matter of serious concern to physicians as a class. In addition, the physicians who rendered services to Tator either will not be compensated at all or will at least be greatly inconvenienced, if the award to Tator and the physicians is annulled.

The interest of the physicians, nurses and hospitals is a proper one for this Court to consider in connection with the question here involved, viz.: is there a sufficient govern-

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<sup>1</sup> If the injured employee, Tator, is not entitled to compensation, it is clear that Drs. Cary, Quigley and Majors and the Peralta Hospital cannot secure compensation in California because the decision of this Court in *Pacific Employers Insurance Company v. French*, 212 Cal. 319, establishes that the Industrial Accident Commission cannot make an award of compensation for medical and hospital services rendered to an injured employee unless there is a principal award of compensation to the employee injured.

mental interest in the State of California to justify it in enforcing its own laws or has such a lack of governmental interest been shown that it must subordinate its laws to [fol. 115] those of another state and consequently refuse to assume jurisdiction over an industrial injury occurring within its boundaries?

It has been specifically held by this Court that a physician as a lien claimant is a "party in interest" within the definition of that term in Sec. 17a of the Workmen's Compensation Act.

Independent Ind. Co. v. In. Acc. Com. 2 Cal. (2d) 397.

In that case it was held that a physician who has rendered medical services to an injured employee entitled to compensation has an interest in the subject matter of the controversy which arises simultaneously with the right of the injured employee to look to the employer or the insurance carrier for payment of such expenses and that this pecuniary interest is sufficient to bring the physician within the class designated by the Workmen's Compensation Act as "parties in interest who are entitled to initiate proceedings". In this case it was, of course, again stated that the physicians' right to compensation was dependent upon an award of compensation being made to the injured employee.

In the case under discussion, Justice Curtis in delivering the opinion of the Court observed that:

"In determining whether or not the Workmen's Compensation Act intended to include as parties in interest, lien claimants such as the doctor herein, it should be borne in mind that it is the purpose of the Workmen's Compensation Act itself that any part or section thereof be liberally [fol. 116] construed, with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment, and that, as a practical matter, injured employees as a class will receive better and more willing medical service if remuneration for such services from an employer or insurance carrier is assured to doctors and hospitals than if instances may arise in which, if an employee neglects to file a claim for compensation, after the services have been rendered, such doctors and hospitals may be required to look only to the injured employee for compensation. It should be borne in mind that the medical, surgical and hospital treatment which is intended to be assured to injured employees as one of the

items of their compensation by the act, will be more certain to be furnished if doctors and hospitals are assured of certain remuneration for their services. It is a matter of almost common knowledge that X-rays and other methods used for diagnostic and remedial treatments are not inexpensive, and a doctor or hospital cannot be blamed for failing to use expensive methods of diagnosis and treatment in the absence of any certainty of reimbursement."

No better statement of the reason underlying the position of respondents and the physicians who treated Tator could have been made. It is to the best interest of the State of California that all persons injured in the course of their employment should receive adequate medical, surgical, nursing and hospital attention. It is likewise to the best interests of the state that no unnecessary inconveniences be placed in the paths of those who furnish such professional services, for the inevitable result of placing hurdles in their paths is to create discontent, doubt and confusion and hence to lower in general the standards of service. To prevent any possibility of inadequate care and treatment this Court has [fol. 117] deemed it to the best interests of the general public to determine that a physician is a party in interest and may initiate proceedings before the Industrial Accident Commission if the injured employee is actually injured in the course of employment and is entitled to an award. Likewise, in the instant case it is to the best interests of the State of California that all employees injured within the territorial boundaries of this state be entitled to the benefits of the California Act so that those persons who in good faith render professional services will not unjustly be deprived of their compensation.

**The Interest of Physicians, Nurses and Hospitals Who Have Rendered Professional Services is a Sufficient Governmental Interest in the State of California Under the Decision in Alaska Packers Association v. Industrial Accident Commission**

Turning to the decision of the Supreme Court of the United States in

*Alaska Packers Assn. v. Ind. Acc. Com.* 294 U. S. 532,

we find that it was there held that a state wherein an injured employee has applied for compensation will not be

denied jurisdiction of such application under the Constitution of the United States, even though all of the incidents of the employment status have not been confined to the borders of that state unless it can be shown upon some rational basis that the interests of some other state are superior to those of the forum. As has been stated:

[fol. 118] "Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted, and one who challenges that right because of the force given to a conflicting statute of another state by the full faith and credit clause assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum."

Considering the rule announced in the Alaska Packers case what interest can we find in the State of Massachusetts? As a governmental matter, the only interest which Massachusetts could have would be to make certain that the employee injured receives adequate medical, surgical, nursing and hospital care and an adequate award of compensation. With respect to the award of compensation, Massachusetts probably was able to take care of the injured employee, but when one considers the professional services necessary it is obvious that no state outside of the state of injury can afford adequate protection as professional services are in the nature of things needed immediately after the injury. They can only be furnished by persons who are at the place of injury. A government whose territory is located at a great distance is wholly incompetent to protect an injured employee's need for adequate medical, surgical and hospital nursing care. Therefore, if this need is to be protected as it should be, it must be done by the government within whose territory the injury occurs.

Massachusetts has no interest in California physicians, California hospitals and California nurses, but California [fol. 119] certainly has a vital interest in those of its citizens who fall within these classes, and it is respectfully submitted that this is a governmental interest which the State of California is entitled to protect under the principles laid down by the Supreme Court of the United States.

A recent case which arose in the District of Columbia throws some light on this situation. In

U. S. Cas. Co. v. Hoage 77 Fed. (2d) 542,

the facts were these: A Georgia resident having entered into an employment contract in Alabama with an Alabama employer was sent to the District of Columbia where an injury occurred. An application was made to the District of Columbia Employees' Compensation Commission and an award was made. On appeal it was held that the District of Columbia was not required by the full faith and credit clause of the Constitution of the United States to give effect to the Alabama Compensation Act because it could not be shown that the interests of the District of Columbia were not superior to those of Alabama. The Court said:

"In the present case the contract of employment contemplated performance of work in any state where the business of the employer (roof construction jobs) might require his services. He was not a resident of Alabama and the period of his actual service in that state was almost negligible. He had worked for several months in the District of Columbia, and his wife and children were not living in Alabama. The District therefore, had a legitimate public interest growing out of the employer-employee relationship, not only to impose liability upon the employer for an injury suffered by the employee, but to provide a remedy available to him in the District of Columbia. To require [fol. 120] him to go to Alabama for redress might result in serious embarrassment and impose a burden on the District of Columbia; in other words, the employee in case of injury might become a public charge. Moreover, in such a situation as confronts the employee time and expense are important considerations.

In a proceeding in the District against the employer, the conflicting Alabama statute could be invoked by the employer only through comity or by virtue of the full faith and credit clause, and in either event only if 'by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight,' it be shown that the interests of the District were not superior.

Applying the rule declared in the Alaska Packers Case, we are of the view that there is no substantial reason for denying the District the right to enforce its own law in its own courts, and that in the circumstances the full faith and credit clause does not require that the statutes of Alabama be given effect."

### Conclusion

An inseparable incident of the employer-employee relationship in this state is an obligation imposed upon the employer to compensate the employee for injuries sustained in the course of employment.

Quong Ham Wah Co. v. Ind. Acc. Com. 184 Cal. 36.

This incident of the employer-employee status exists whenever that status exists regardless of where the status may have been created.

Alaska Packers Assn. v. Ind. Acc. Com. 294 U. S. at 541.

Prima facie California is entitled to enforce in its own Courts its own statutes, lawfully enacted, including the [fol. 121] obligations imposed by the Workmen's Compensation Act as an incident to the status of employer-employee. This right to enforce its own statutes can only be denied to California if it is affirmatively shown that a statute in some other state conflicts therewith and that a governmental interest of that other state is superior to the governmental interest of California. It is respectfully submitted that the interest of Massachusetts in the case at bar has not been shown to be superior to that of California and that, therefore, no persuasive reason exists for denying to California the right to enforce its own laws in its own courts.

Dated, San Francisco, California, October 11, 1937.

Respectfully submitted, Hartley F. Peart, Howard Hassard, Attorneys for N. Austin Cary, M. D., J. Scott Quigley, M. D. and Ergo A. Majors, M. D.

Receipt of a copy of the within Points and Authorities in Support of Respondents and on Behalf of Certain Physicians who rendered Medical Services to Respondent Tator, as hereby admitted this 13th day of October, 1937.

W. N. Mullen, Attorney for Petitioner.

[fol. 122] [File endorsement omitted]

## IN SUPREME COURT OF CALIFORNIA, IN BANK

S. F. 15785

PACIFIC EMPLOYERS INSURANCE COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF  
CALIFORNIA and KENNETH TATOR, Respondents

OPINION—Filed January 31, 1938

The petitioner by this proceeding for review, seeks to annul an award of compensation made by the Industrial Accident Commission upon the ground that at the time the employee was injured, he was subject to the Workmen's compensation law of Massachusetts. The defense of the insurer is that Massachusetts has exclusive jurisdiction of the controversy.

Dewey & Almy Chemical Company is a Massachusetts corporation, licensed to do business in California. Its principal offices are in Cambridge, Massachusetts, and one of its several factories is at Oakland, California. The business of the company is managed by its executive officers in Massachusetts and a research laboratory is maintained there.

Kenneth Tator, the injured employee, formerly lived in Portland, Oregon. He left there to attend Massachusetts Institute of Technology, from which he graduated. Since January, 1930, he has been employed by the Dewey & Almy Company as chemical engineer and research chemist. The [fol. 123] contract of employment (which is in writing but does not appear in the record) was made in Cambridge, and Mr. Tator has worked there in the company's research laboratory except at various times when he had been sent elsewhere on company business.

In September, 1935, one of the principal customers of the company made a complaint about a chemical compound manufactured at the Oakland plant. Following a conference in New York between officers of the company and this customer, the company's general manager ordered Mr. Tator, then at the laboratory in Cambridge, to go to Oakland and investigate the situation. Mr. Tator did so, and suggested several changes in the machinery of the plant. The evidence

shows that he made written reports from time to time concerning his work. These reports were addressed to the manager of the Oakland plant, but copies were sent to the Home Office in Cambridge and Mr. Tator received comments and suggestions from his superiors there.

It is clear that throughout this time he was subject to the control and direction of the officers of the company at Cambridge, although his method of procedure was subject to the approval of the manager of the Oakland factory, who assigned him a place to work, named men to assist him, and had limited authority to accept or reject the suggestions he made regarding changes in equipment. However, these were matters of detail. Mr. Tator had been sent to Oakland to find out why the company's product manufactured there [fol. 124] did not meet requirements, and to remedy the difficulty. His status in California is defined very clearly by his own testimony. Speaking of the trouble at the Oakland plant, he said: "I was brought out there to solve the thing by my technical knowledge if I could. \* \* \* I was advising the Oakland branch from a technical standpoint. \* \* \* When I had found the trouble and rectified it, I was to \* \* \* notify Cambridge and await orders. \* \* \* There was no thought of staying out here permanently."

While he was in California Mr. Tator remained on the payroll of the company in Massachusetts and his salary as it accrued was deposited to his account in a bank in Massachusetts. He was given an advance before he left Cambridge to meet his traveling and other expenses in California, and a further sum was advanced to him by the Oakland office. At the time of the hearing these expenses had been billed to the Oakland office and the local manager understood that a charge would later be made for Mr. Tator's salary while he was in California.

At the time of Mr. Tator's injury, the Dewey and Almy Chemical Company carried workmen's compensation insurance covering its operations in Massachusetts and also in California. The Hartford Accident and Indemnity Company insured it by a policy under which the obligations of the insurer include the workmen's compensation law of Massachusetts (G. L. Ter. Ed., C. 152) "and none other". [fol. 125] This policy names Cambridge and Walpole, Massachusetts, as the location of all work places of the employer.

A policy issued by the petitioner insured the chemical company against the obligations imposed by the California Workmen's Compensation, Insurance and Safety Act of 1917 (Stats. 1917, p. 831, as amended) and names the workplaces of the employer as the factory in Oakland "and elsewhere in the State of California".

After being injured, Mr. Tator made an application to the Industrial Accident Commission of California for compensation, naming Dewey & Almy Chemical Company as his employer and the petitioner as the employer's insurance carrier. The latter filed an answer denying the jurisdiction of the commission to determine the claim for the reason that he was an employee of Dewey & Almy Chemical Company in its operations in the State of Massachusetts and was not covered by the workmen's compensation insurance policy of the petitioner. It is further alleged "that the applicant is a resident of the State of Massachusetts and entered his employment therein, and not having rejected the extra territorial effect of the Workmen's Compensation Act of the State of Massachusetts, thereby did elect, in the event of injuries sustained by him outside the confines of the State of Massachusetts, to accept the benefits of said State, and such an agreement was a part of his contract to hire."

Prior to the hearing the Hartford Company was joined as a defendant. The commission found that Mr. Tator [fol. 126] sustained injury at Oakland, California, while employed as a chemical engineer "by the Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation". It determined that this injury caused permanent disability which it rated at 42 $\frac{1}{4}$  per cent of total, and awarded compensation therefor against the petitioner. It also found that the Hartford Accident & Indemnity Company was not the insurance carrier of the employer and dismissed it and the employer from all liability.

The workmen's compensation law of Massachusetts provides: "An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right. \* \* \* If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who

has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the [fol. 127] commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it." It is conceded that no notice was given by Mr. Tator pursuant to the provisions of this law, and the petitioner asserts that under such circumstances Massachusetts has exclusive jurisdiction to award compensation for the injury.

In the leading case of Bradford Electric Light Co. v. Clapper, 286 U. S. 145, an employee of a Vermont corporation was killed while working in New Hampshire. He resided in Vermont and had been employed in that state as a lineman for emergency service either there or in New Hampshire. The accident occurred when he was sent to the New Hampshire substation to make some repairs. The employer, invoking the full faith and credit clause, set up a special defense: It pleaded that the action was barred by the provisions of the workmen's compensation act of Vermont which as in effect at the time of the accident, provides that a workman hired within the state shall be entitled to compensation for an injury received either within or without the state; that "employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to [fol. 128] include such agreement". The act also stipulates that every contract of employment made within the state shall be presumed to be subject to its provisions unless prior to the accident an express statement to the contrary shall have been made by one of the parties, and that acceptance of the act is "a surrender by the parties \* \* \* of their rights to any other method, form or amount of compensation or determination therefor." Neither the employer nor the

employee filed any statement declining to accept any provision of the Vermont act.

In determining that the rights of the employer and the representative of the dead employee were fixed by the law of Vermont and that the action in New Hampshire could not be maintained, the court said: "The administratrix contends that the full faith and credit clause is not applicable. The argument is that to recognize the Vermont act as a defense to the New Hampshire action would be to give to that statute an extra-territorial effect, whereas a state's power to legislate is limited to its own territory. It is true that full faith and credit is enjoined by the Constitution only in respect to those public acts which are within the legislative jurisdiction of the enacting State. (See *National Mutual Bldg. & Loan Assn. v. Braham*, 193 U. S. 635, 647; *Olmstead v. Olmstead*, 216 U. S. 386, 395:) But, obviously, the power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries. It has power through its own tribunals to [fol. 129] grant compensation to local employees, locally employed, for injuries received outside its borders, compare *Quong Ham Wah Co. v. Industrial Accident Com.*, 255 U. S. 445, dismissing writ of error, 184 Cal. 26, 192 Pac. 1021, and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries. \* \* \* The answer is that such recognition in New Hampshire of the rights created by the Vermont Act, can not, in any proper sense be termed an extra-territorial application of that Act. \* \* \* The relation between Leon Clapper and the Company was created by the law of Vermont; and as long as that relation persisted its incidents were properly subject to regulation there. For both Clapper and the company were at all times residents of Vermont; the Company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. The mere recognition by the courts of one State that parties by their conduct have subjected themselves to certain obligations arising under the law of another state is not to be deemed an extra-territorial application of the law of the state creating the obligation. Compare *Canada Southern*

Ry. Co. v. Gebhard, 109 U. S. 527, 536, 537. • • • By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Vermont, the Federal Constitution prevents the employee or his representative from asserting in New Hampshire rights which [fol. 130] would be denied him in the state of his residence and employment. • • • The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the State's interest would be subserved, under such circumstances, by burdening its courts with this litigation."

In the later case of Ohio v. Chattanooga Boiler Co., 289 U. S. 439, the employer was a Tennessee corporation and the dead employee had been a resident of that state and had been hired there. The accident for which compensation was claimed occurred in Ohio. That state, after paying an award of compensation from its insurance fund, brought an original action against the employer to recover the amount of its payment. In defense, the employer relied upon a provision of the Tennessee workmen's compensation law that "the rights and remedies herein granted to an employee subject to this Act on account of personal injury or death by accident shall exclude other rights and remedies of such employee, his personal representative, dependents or next of kind, at common law or otherwise, on account of such injury or death". However, in giving judgment for Ohio, the supreme court pointed out that this statute, as construed and applied by the highest court of Tennessee, did not preclude recovery under the law of another state "and the full faith and credit clause does not require that greater effect be given the Tennessee statute elsewhere than [fol. 131] is given in the courts of that State."

The principles stated in the Clapper case were followed and applied in Cole v. Industrial Commission, 353 Ill. 415, 187 N. E. 520, 90 A. L. R. 116. There the employee, who was injured while at work in Illinois, was a resident of Indiana and was hired there by contractors who resided and had their principal place of business in that state. The Indiana law provided that the rights and remedies "granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representa-

tives, dependents or next of kin, at common law or otherwise, on account of such injury or death". The court held that as the contract of employment was made in the state of Indiana between parties who were subject to the terms of the workmen's compensation law of that state, the remedy provided by it was an exclusive one.

The more recent case of *Alaska Packers Assn. v. Industrial Accident Commission*, 294 U. S. 532, presents another application of the full faith and credit clause. In that case an employee who had been hired in California for seasonal work in Alaska recovered compensation under the California law, in spite of a contract made by him in which he elected to be bound by a law of Alaska. This award was affirmed. At the time of the injury, which occurred in Alaska, the California law provided: "The (industrial accident) commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this State . . . ." This statute, the court said, came in conflict with the statute of Alaska, and such a conflict is to be resolved "not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

The case of *De Gray v. Miller Bros. Construction Co.*, (Vt.) 173 Atl. 556, also recognizes the public policy of the forum as controlling. The court said that when a person employed in another state is injured in Vermont, its courts, either upon the principles of comity or under the full faith and credit clause, usually will decline to take jurisdiction if the contract of employment does not conflict with the law and public policy of Vermont. But it was held in *Esau v. Smith Bros.* (Neb.) 246 N. W. 230, that the full faith and credit clause must yield to the public and domestic policy of the state which is asked to enforce the constitutional provision.

In considering the application of these and other cases to the right of Mr. Tator to recover compensation in California, it is important to note that the supreme court of Massachusetts has decided that in the administration of the

workmen's compensation law, the industrial accident com-[fol. 133] mission and the courts of that state are not bound by the acts of any other jurisdiction and that a proceeding brought in another state by an employee hired in Massachusetts "has no standing in law." (Mignes' Case, 281 Mass. 373, 183 N. E. 847; McLaughlin's Case, 274 Mass. 217, 174 N. E. 338). In each of these cases an award made in Massachusetts in favor of an employee was sustained notwithstanding the fact that compensation had also been allowed in another state, although the employer was allowed credit for the amount previously awarded. In the Clapper case it was stated that if the action for damages in New Hampshire could be maintained, the plaintiff might get a recovery which would be denied him by the law of Vermont; this also has some bearing upon Mr. Tator's application. Although the proceeding brought by him in California sought an award under the compensation law and is not an action for damages, the scale of compensation benefits is not the same in all states. If the employee may disregard the law of the state of his residence and employment and assert his rights in another jurisdiction, an employer may be required to pay compensation in an amount different from that for which he would be liable under the *lex loci*.

Upon the principles which have been stated and applied in these cases, Mr. Tator cannot recover compensation in California unless this state has a governmental interest in the controversy superior to that of Massachusetts. At the time of his injury Mr. Tator was a resident of Massachusetts. He was employed there, and was subject to the [fol. 134] direction of officers of the employer there located. His salary was paid to him in that state, and he had come to California only on a specific errand for his employer. Under these circumstances the interest of California, like that of New Hampshire in the Clapper case, *supra*, is only "casual" unless there are other facts upon which a governmental interest may be based. It is urged that this interest may be found in the medical and hospital expenses which were incurred in this state and had not been paid at the time of the hearing.

The modern view that the cost of industrial injuries is properly a part of the expense of production underlies all workmen's compensation laws. (Western Ind. Co. v. Pills-

bury, 170 Cal. 686). The public has a direct interest in the results of industrial accident. When the injured employee had only a right of action for damages, he too often became an object of charity. Even under present laws the public bears some part of the expense of such accidents in addition to the amount which is added to the cost of manufacture. The public, therefore, is vitally concerned to see that adequate medical care is furnished to those injured. Indeed, the constitutional amendment adopted in 1918 which vested the legislature with plenary power to create and enforce a complete system of workmen's compensation defines such a system as including "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury". [fol. 135] (Art. XX, Sec. 21.) The workmen's compensation law uses this same language in prescribing the medical and hospital treatment which an employer must furnish. (Sec. 9a.) Even before these enactments this court recognized the important place medical care has in the administration of workmen's compensation when it said: "Compensation means more than a mere cash payment to an individual. Compensation to employees for injuries incurred by them may fairly be said to mean not only a money payment to the employee himself, but provision or indemnification for the various elements of loss which may be the direct result of his injury. It includes, for example, the obligation to provide medical and surgical treatment (Sec. 15, subd. a)—an obligation which does not necessarily involve payment in cash to the employee himself". (Western Metals Supply Co. v. Pillsbury, 172 Cal. 407.)

An award for medical expense cannot be made in favor of a physician in a proceeding to which the injured employee is not a party (Pacific Employers Insurance Co. v. French, 212 Cal. 139), but a physician who has rendered medical aid to a compensable employee may maintain an application to recover the value of his services in a proceeding in which both the employer and employee are named as defendants. Such a physician is a party in interest because an effective administration of the workmen's compensation act both assures and requires adequate medical care and treatment. This court has said: "As a practical matter, injured employees as a class will receive better and more [fol. 136] willing medical service if remuneration for such

services from an employer or insurance carrier is assured to doctors and hospitals than if instances may arise in which, if an employee neglects to file a claim for compensation, after the services have been rendered, such doctors and hospitals may be required to look only to the injured employee for compensation. It should be borne in mind that the medical, surgical and hospital treatment which is intended to be assured to injured employees as one of the items of their compensation by the act, will be more certain to be furnished if doctors and hospitals are assured of certain remuneration for their services." (Independence Indem. Co. v. Indus. Acc. Com., 2 Cal. (2d) 397, 404.)

The public policy of California upon this question has been clearly and positively stated in the Constitution, the workmen's compensation law which was enacted pursuant to it, and the decisions of this court. It would be obnoxious to that policy to deny persons who have been injured in this state the right to apply for compensation when to do so might require physicians and hospitals to go to another state to collect charges for medical care and treatment given to such persons. Under these circumstances the governmental policy of California weighs more heavily in the scale of decision than the law of Massachusetts and the conflict in laws must be resolved in favor of the state where the injury occurred.

[fol. 137] The award is affirmed.

Edmonds, J.

We concur: Shenk, J. Curtis, J. Seawell, J. Waste, C. J. Langdon, J.

I concur in the judgment. Houser, J.

[fol. 173½] [File endorsement omitted]

## IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING AFTER PER CURIAM DECISION—  
Filed February 19, 1938

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[fol. 140]

[Title omitted]

## PETITION FOR REHEARING

To the Honorable William H. Waste, Chief Justice and to the Honorable Justices of the Supreme Court of California:

Pacific Employers Insurance Company respectfully petitions for a rehearing after per curiam decision in the above entitled proceeding on review affirming the award of respondent Industrial Accident Commission against petitioner, and for grounds thereof avers as follows:

## I

The Case of Bradford Electric Light Company vs. Clapper, 286 U. S. 145, and Companion Cases Cited to Your Honorable Court Are Controlling

The opinion of your Honorable Court in connection with the above matter well recites the facts and clearly enunciates the holdings of Bradford Electric Light Company v. Clapper, 286 U. S. 145, and companion cases thereto, all of which cases hold that where at the place of contract of hire it is provided that any contract of employment carries with it the exclusion of the right to obtain compensation benefits under the law of any other state, which is an inherent right of the state where the contract is entered into, that the courts of such other states have no right to interfere with the terms of such contract of employment.

If the facts of the present case be substituted for those in the Bradford Electric Light case, *supra*, or those in the Chattanooga Boiler and Tank Company case, 289 U. S. 439, there can be no contention that the law enunciated in those cases does not properly apply to the present case. Your Honorable Court, it is noted, takes no issue with the reasons for the law and the application of the law in the above cases, wherein it is held that under circumstances, such as in the case at bar, the law of the place where the contract of hire was made must be given full faith and credit.

## II

The Decision Improperly Applies the Doctrine of Governmental Interests as Set Forth in the Case of Alaska Packers Assn. v. Ind. Acc. Com., 294 U. S. 532

In the opinion of your Honorable Court in the present case, it is stated that the case of Alaska Packers Assn. v. Ind. Acc. Commission, 294 U. S. 532, presents another application [fol. 142] of the full faith and credit clause than that used in the Bradford Electric Light Company case, *supra*, and the companion cases thereto. The Alaska Packers case is an exact opposite to the case at bar. This may be demonstrated by substituting in that decision the name "California" for "Alaska" and the name "Massachusetts" for "California". Such opinion would then read that the law of Massachusetts, the place where the contract of hire was made, must govern. The court must, of course, give consideration to the law of the forum, when one places himself under the jurisdiction thereof, where the contract of employment has been made there. This, in effect, is all that the Alaska Packers case holds.

Although it is not stated in the opinion in the case at bar, the opinion in the Alaska Packers case clearly holds that for one state not to give full faith and credit to the laws of a foreign state, it must appear that the interest of the forum is superior to the interest of the foreign state. The Alaska Packers case shows clearly that this superior interest must not be assumed but must exist as a matter of fact.

The United States Supreme Court in that case discusses the failure to give full faith and credit to the statutes of the foreign state by using the terms "superior interest", "greater interest", and "Turning the scale of decision according to their (interests') weight".

[fol. 143] We can see no analogy between the Alaska Packers case and the other cases of the United States Supreme Court, which were discussed before your Honorable Court, and cited by your petitioner herein. We do not believe that the mere statement made in *Esau v. Smith Bros.*, 246 N. W. 30, and set forth in the opinion in the present case, can be accepted as holding that the full faith and credit clause must yield to the public and domestic policy of the state which is asked to enforce the constitutional provision. Certainly,

the terms "superior interest" and "greater weight" must apply.

If the Alaska Packers case is to apply at all, the question is whether or not California has an interest in Mr. Tator's accident and injury which is superior to the interest of Massachusetts. In order that the Massachusetts statute not be accorded full faith and credit, your Honorable Court must find that the governmental interests of California are superior to those of Massachusetts, not that any interest exists in California, or that it is more convenient for a California citizen to obtain legal protection in California but that the interests of California overbalance the interest of Massachusetts where the contract of employment was entered into.

The facts clearly show that Mr. Tator was on the Massachusetts payroll of his employer, and, therefore, the compensation insurance premiums paid by his employer thereon must have gone to insurance company covering the workmen's compensation risk of the employer under Massachusetts law. Mr. Tator was a resident of Massachusetts and the record of the Industrial Accident Commission now shows that Mr. Tator has petitioned for a supplemental award for reimbursement for medical treatment and an artificial hand and gloves, all of which expenses were incurred in Massachusetts, and amounted to \$109.00.

In the Bradford Electric Light Company case, *supra*, and those cases cited as conforming to it, certainly there must have been medical bills contracted in the foreign state, and in other instances burial expenses must have been involved. But the United States Supreme Court ignored such facts, and decided the cases on the question of constitutional law involved, and not on the grounds of convenience. It is noteworthy that in the Alaska Packers case medical expenses had been contracted in Alaska. This appears in the opinion of your Honorable Court therein, 1 Cal. (2d) 250. Yet this fact was accorded no weight by your Honorable Court, and was completely disregarded by the United States Supreme Court. How then does your Court now ascribe so much importance to the fact that Mr. Tator received medical service in California?

It is our contention that the mere ground of convenience cannot take from one state the right of an employer therein

to contract with his employee there, and specify what the employee's benefits may be in the event of injury. The Alaska Packers case has held that California has the right [fol. 145] to ignore an agreement of an employee to be bound by the compensation act of another state, because the man was hired in California and California has jurisdiction over his contract of employment, and since the law of California prevents anyone from releasing his rights to California compensation benefits without the approval of the Industrial Accident Commission, the California law must govern.

As pointed out above, we believe that if the name "California" is substituted for the name "Alaska," and the name "Massachusetts" for the name "California," it must be said that the Alaska Packers case is on "all fours" with your Petitioner's contention that the Industrial Accident Commission of the State of California has no jurisdiction over the claim of Mr. Tator.

The interest of California, as stated before, cannot be casual, and we say that the interest of Massachusetts, as well as the interest of California, must be considered.

In the Alaska Packers case it was stated that California had a superior interest because the injured man was a citizen of California, and, if not protected, he might become a ward of the state. Likewise, we say that Mr. Tator was an employee of a Massachusetts employer and a citizen of such state, to which he later returned. Transportation expenses [fol. 146] were assumed by his employer. Clearly, if he is to become the ward of any state it will be Massachusetts, the state of his residence. Under the above facts he could not well become a ward of California.

It is economically important that an employer be able to look to the law of the state of his residence, the place where his business is principally conducted, the place where the contract of employment is made, and where it is to be principally performed, and do so with the assurance that such law will be given full faith and credit by other states. Otherwise, he must carry workmen's compensation insurance in every state in which, or through which, any single employee may travel. The increased burden on industry, and the inevitable increase in producer's and consumer's costs, are elements of great significance, and give great weight to the interest of Massachusetts in the present case.

This point was given no consideration by your Honorable Court.

If the award to Mr. Tator be allowed to stand, a California company will be paying compensation to a man residing in Massachusetts, who will receive greater benefits thereby than if he had pursued his remedy in Massachusetts. Certainly, the opinion of this Court should not be interpreted to have leaned toward a man because he could get greater benefits by filing his claim in California than if he had filed his claim in Massachusetts.

We ask, where does the State of California have any interest in the claim of Mr. Tator except that hospital and medical expenses were contracted here? It is upon this basis that your Honorable Court has found the interests of California to have "greater weight," and to be "superior."

Mr. Tator could have filed a claim in Massachusetts. The Massachusetts Act provides for the filing of medical bills and having them paid in the same manner as under the California Act which is by reimbursement to the employee, if he has expended money for such services, or by direct payment to the one who rendered such services, if he has not been paid. Naturally, these bills could not be paid under the Massachusetts Act unless Mr. Tator filed claim and established jurisdiction thereunder. But because he has failed to do so, and thus has failed to secure a remedy of which there can be no doubt, can it be said that by his failure to so act a superior interest is thereby created in California?

Mr. Tator and his employer are the main parties in interest, and, as such, have certain rights. The right of Mr. Tator is for disability indemnity and medical treatment, and the expense thereof. The right of the employer is to know what his liability is to an injured employee, and the basis thereof. The employer has as great an interest as has the employee.

It seems to have been assumed by your Honorable Court that, unless California took jurisdiction in this case, the California hospitals and doctors would never receive payment. But, as before explained, if Mr. Tator had filed his claim in Massachusetts, the California doctors and hospitals could have recovered there. Or those who had not been paid could have assigned their claims to a Massachusetts resident and recovery thereon could be recovered in Massachusetts by the assignee.

In the Alaska Packers case medical treatment was accorded to the injured employee in Alaska. If the furnishing of medical treatment is to determine the interests of one state as superior to those of another, why then was it not held that Alaska had the superior interest and California should subserve to the Alaskan law?

Let us assume that A, an employee of X, with his place of business in State Y, while flying to China on business, is injured in California, near the boundary line. He is taken to a California physician, who treats him for several days and then transports him across the state line into Nevada, where A is hospitalized for three weeks, receiving medical treatment from Nevada doctors. He is then able to return to State Y where he convalesces for three months, and receives constant medical attention from doctors of State Y. After recovery, he files a claim for compensation benefits in California. Should California apply the doctrine enunciated in the case at bar? To do so would seem ridiculous, [fol. 149] but essentially the case is the same as that of Mr. Tator.

We call your attention to the fact that, during the appeal in this matter, Mr. Tator has filed with the Industrial Accident Commission, under the same claim here under consideration, a petition asking for reimbursement for medical treatment and an artificial hand. The medical treatment was performed by a Massachusetts physician, and the artificial hand was secured in Massachusetts from a Massachusetts firm. This is now part of the record herein.

It would appear that your Honorable Court looked to the reasoning of the *amicus curiae* brief filed on behalf of Drs. Quigley, Carey and Majors, and in support of respondents. This brief, of course, was filed at the submission of the case and your petitioner had no opportunity to answer thereto. While it is apparently agreed therein that the superior interest is in Massachusetts, their reasoning to counterbalance it to California is weak. They say physicians generally do not have legal knowledge. We say that is true of all who are not lawyers, but we have never yet known of anyone making another pay a claim by saying that they did not know that the law was contrary to their assumption. They say that the doctors assumed that this was a compensation case, and on that assumption treated Mr. Tator, but they do not show that payment has ever been refused. They placed the bills in the hands of Mr. Tator for payment.

They are hiding behind the cloak of charity because they first gave treatment and looked for recompense later. They [fol. 150] treated Mr. Tator for weeks and never sought security for their bills.

We ask, what if Mr. Tator had been injured in an automobile accident when not working? The doctors would like to be governed by what they assume to be the law, and they ignore the possibility of assigning their bills for collection or having Mr. Tator file their bills with his claim in Massachusetts.

They conclude that California has some governmental interest because of the medical expenses being contracted here, but wherein have they shown that the greater governmental interest existed in California, and wherein have they shown that the doctors and the nurses have a superior interest in this accident or injury to that of the employer and employee?

They also assume that they are without recompense, and that, since they acted in good faith, they should be paid, but, we ask, is this a reason for declaring that full faith and credit should not be given by one state to the laws of another, when the law of the other state is, of its very essence, the creation of a right and condition from which the claim flows, and which could not flow without the existence thereof. They forget, and we believe that your Honorable Court has, also, that the man who pays is of as much importance, and as worthy of consideration, in this question, as the one who desires to collect.

They cite the case of U. S. Casualty Co. v. Hoage 77 Fed. [fol. 151] (2d) 542. This case has been discussed previously in briefs on file, but is not applicable here. The man was hired in Alabama, but performed practically all of his work in the District of Columbia, where the action was brought. Because a man performs the major part of his service in the District of Columbia and was hired for the sole purpose of going there, certainly puts forward an entirely different situation than that presented in the case at bar.

To say that California has an interest in this case because of the interests of California doctors and hospitals is illogical and has no foundation in reason. As has been so well stated in the opinion of this Court, in this matter, compensation includes the obligation to provide medical and surgical treatment. Consequently, awards for medical treat-

ment and hospital expenses depend on the same thing as awards of disability indemnity. Neither can be awarded unless the jurisdiction of the Industrial Accident Commission to make such award is first established. In either case, the award is made to the injured party. Consequently, unless this injured party can establish jurisdiction in the California tribunal, no award for medical and hospital expense can be made.

This rule is not changed by the rule of Independence Indemnity Co. v. Ind. Acc. Com., 2 Cal. (2d) 397, 404. That case held that a physician who has rendered medical aid to a compensable employee may maintain an application to recover the value of his services in a proceeding brought by him, in which both the employer and employee are named as [fol. 152] defendants. It recognizes the rule laid down in Pacific Employers Ins. Co. v. French, 212 Cal. 139, that the physician's right is dependent upon the right of the injured employee, and the imposition of a lien for medical services presupposes the making of an award to the employee. In other words, the interest of the doctors and hospitals is a lien interest, and before it can be given existence the award to the injured employee must be made. The award to the injured employee cannot be made until jurisdiction of the tribunal is determined. Ergo, the existence of medical expenses cannot determine jurisdiction, but can only exist after jurisdiction to make the award to the injured employee is determined. How then can the interest of the doctors and hospitals in the present case be considered?

We believe, in view of the foregoing, that if, on reconsideration, it is still the opinion of your Honorable Court that the rule of the Alaska Packers case applies, it should be held that the superior governmental interest does not lie in California.

We think it is also of importance for your consideration that none of those who supplied this man with medical treatment, nursing, and hospitalization, filed a claim before the Industrial Accident Commission of this state. They merely turned the bills over to Mr. Tator's attorneys, who filed them with the rest of the record with the request that they be ordered paid.

[fol. 153] It is difficult to picture a compensation case not involving a medical bill of some sort or the requiring of the services of an undertaker. Therefore, should it be assumed

that the desires of those who render medical treatment should determine the question of full faith and credit? We say no. The determination is a legal one and for our guidance we must look to the Federal Constitution and the interpretations thereon by the United States Supreme Court, which we insist must govern here. They must supersede the opinion of some physician who assumes the man is entitled to compensation and can apply for payment in California and further assumes that he may forget all business principles and rely upon ignorance to get him out of any difficulty into which he might have entered. Should the law protect a physician to any greater extent than any artisan or any other citizen of the state?

### III

**The Award Should Not Have Been Affirmed, for the Industrial Accident Commission Should Have Been Ordered to Amend Its Finding that Tator was Employed by the Berkeley Branch of His Employer**

As is shown by Exhibit A, attached to Petition for Hearing on file herein, the Industrial Accident Commission held that Mr. Tator was employed by the Berkeley Branch of the employer. Counsel for applicant before your Honorable Court stated that that was not his contention.

[fol. 154] Counsel for the Industrial Accident Commission stated that the Commission did not seriously contend that Mr. Tator was employed by the Berkeley Branch.

Your Honorable Court has also taken that view point. However, one of the contentions made at the hearing of this matter before your Honorable Court was that there was no evidence to justify the finding that Mr. Tator was employed by the Berkeley Branch. This being true, then the award is incorrect, and, if for no other reason, we believe the order of your Court should have been to remand the case and have the Commission find that Mr. Tator was employed by the Massachusetts Branch of the employer. This, of course, could also be done by an order of your Court, changing the findings of fact. Unless this is done, the award does not conform to the findings, because certainly your Honorable Court would not have gone into the question of full faith and credit if it had agreed that Mr. Tator was employed by the Berkeley Branch.

If your Honorable Court does not give the redress requested herein, it is the intention of your petitioner to appeal this matter to the United States Supreme Court, and unless the award is changed as requested, which is evidently the manner in which your Honorable Court has decided it should read, your petitioner might be met with the argument before the United States Supreme Court that since the award found the man to have been employed by the [fol. 155] Berkeley Branch, the question of full faith and credit was immaterial.

### Conclusion

In the original Petition for Hearing in this Court after decision by the District Court of Appeal, other considerations, not here mentioned were urged upon the court. We here ask leave to urge each of them anew, and incorporate herein, as though set out at length, the contents of the foregoing petition.

Wherefore, it is respectfully prayed that your Honorable Court again give consideration to this matter in light of the points made herein and that it be decided to determine either that the Bradford Electric Light case and its companion cases are governing, or that, if the Alaska Packers case is considered to govern, that there has not been a showing of a superior governmental interest in California to justify the denial of full faith and credit to the laws of Massachusetts, when such superior interest is set out only by the fact that physicians and hospitals in California might have some inconvenience in collecting their bills if Mr. Tator were told that he should file his claim in Massachusetts and California could give him no redress.

Respectfully submitted, W. N. Mullen, Attorney for Petitioner, Pacific Employers Insurance Company.

[fol. 156] *Duly sworn to by James C. McDermott. Jurat omitted in printing.*

[fol. 156½] Receipt of copy of the within Petition for Rehearing after Per Curiam decision acknowledged this 19th day of February, 1938.

Everett A. Corten, Attorney for Respondent Industrial Accident Commission.

[fol. 157] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA, IN BANK

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed February 28, 1938

By the Court:

The Petition for a rehearing herein is denied.

Shenk, Acting Chief Justice.

Dated February 24, 1938.

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[fol. 158] IN SUPREME COURT OF CALIFORNIA, BANK

San Francisco, No. 15785

PACIFIC EMPLOYERS INSURANCE COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and KENNETH TATOR, Respondents

On Review from the Industrial Accident Commission of the State of California

JUDGMENT—January 31, 1938

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged and Decreed by the Court that the Award of the Industrial Accident Commission of the State of California in the above entitled cause, be and the same is hereby affirmed.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 159] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

**Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed May 3, 1938**

**PETITION FOR APPEAL**

Considering itself aggrieved by the final decision of the Supreme Court of the State of California in the above entitled cause, Pacific Employers Insurance Company, a corporation, the appellant above named, hereby prays that an order of appeal be entered herein, and for an order fixing the amount of the bond thereon.

**ASSIGNMENT OF ERRORS**

Comes now the appellant above named, Pacific Employers Insurance Company, a corporation, and as appellant to the Supreme Court of the United States from the judgment and decision heretofore entered herein, assigns as error:

I. That the Supreme Court of the State of California erred in refusing to annul the award of the Industrial Accident Commission of the State of California.

II. That the Supreme Court of the State of California erred in denying full faith and credit to the Public Act of the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chapter 152 designated: The [fol. 160] Massachusetts Workmen's Compensation Act), and erred in holding it was not a denial of full faith and credit to refuse to apply the Massachusetts Workmen's Compensation Act to the claim for compensation asserted by Appellee Tator.

III. That the Supreme Court of the State of California erred in holding that under the circumstances of this case the governmental policy of the State of California weighs more heavily in the scale of decision than the law of the Commonwealth of Massachusetts, because medical and hospital expenses were incurred in California, and, for that reason, the conflict in laws must be resolved in favor of California, the state where the injury occurred.

IV. That the Supreme Court of the State of California erred in denying full faith and credit to the Public Act of

the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chapter 152, designated: Workmen's Compensation) on the authority of the case of *Alaska Packers' Assn. v. Ind. Acc. Com.*, 294 U. S. 532.

V. That the Supreme Court of the State of California erred in giving effect to the statutes of the State of California instead of to the statutes of the Commonwealth of Massachusetts.

VI. That the Supreme Court of the State of California erred in holding that the imposition of liability by the State of California for injuries incurred by a resident of the Commonwealth of Massachusetts in the State of California in the course of a wholly Massachusetts employment does not trespass upon the exclusive jurisdiction of the United States Congress, and erred in denying the existence or legality of the Massachusetts Workmen's Compensation Act.

#### PRAYER FOR REVERSAL

For which errors the appellant above named, Pacific Em- [fol. 161] ployers Insurance Company, a corporation, prays that the said judgment of the Supreme Court of the State of California, dated January 31, 1938, in the above entitled proceeding, be reversed, and that the award of appellee Industrial Accident Commission of the State of California in the above entitled proceeding against appellant and in favor of appellee Kenneth Tator be reversed, and that appellant be awarded its costs.

Dated April 29, 1938.

George V. Faulkner, W. N. Mullen, Attorneys for Appellant.

[fol. 161½] [File endorsement omitted.]

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[fol. 162] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

#### ORDER ALLOWING APPEAL—Filed May 3, 1938

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this proceeding to the Su-

preme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of California on the 31st day of January, 1938, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is now here Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause, as provided by law; and

It is hereby further Ordered that the clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment of this cause and transmit the same to the Clerk of the Supreme Court of the United States, so that he shall have the same in the said court within sixty days of this date.

And in view of the fact that appellant is a licensed insurance company of the State of California, principally en-[fol. 163] gaged in the writing of workmen's compensation insurance and has sufficient deposit with the Treasurer of the State of California and the Insurance Commissioner of the State of California good and sufficient for the payment of any award made by the Industrial Accident Commission of the State of California against appellant, it is further Ordered that no bond should be required from appellant on account of the appeal herein allowed, other than security for costs on appeal, which security is here fixed in the sum of five hundred dollars (\$500).

Dated May 2nd, 1938.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 163½-195] [File endorsement omitted.]

[fol. 195½] [File endorsement omitted]

[fol. 196] IN DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

[Title omitted]

RESPONDENT KENNETH TATOR'S ANSWER TO PETITION FOR WRIT OF REVIEW—Filed September 10, 1936

In its petition for writ of review Petitioner Pacific Employers Insurance Company asks this Court to annul the findings and award of the Respondent Industrial Accident Commission of the State of California of April 25, 1936, on the ground that said Commission had no jurisdiction to issue said findings and award; that it was devoid of such jurisdiction by reason of the fact that jurisdiction to adjudicate the issues involved rested solely and exclusively in the judicial and administrative tribunals of the State of Massachusetts.

We believe that though Petitioner has outlined to the Court the salient facts of the case, certain important facts have been overlooked and other facts have been misinterpreted. We will, rather than restate the facts entirely, merely point out the true state of the record as the circumstances appear germane to the issues of law involved.

## I

### There are no Equities in Favor of the Petitioner

Much is made in the petition for writ of review of the finding of Respondent Commission that Respondent Tator was "employed as a chemical engineer at Oakland, California, on October 17, 1935, by the Pacific factory of the Dewey & Almy Chemical Company" at the time of his injury. Petitioner states:

"Your petitioner's policy of insurance covered only men employed by the Pacific Coast Branch of the employer, and your petitioner would not be entitled to compensation premium on Mr. Tator's salary while working in California, and would never get it, inasmuch as he was carried on the payroll of the home office."

Points & Authorities, Petition for Writ of Review,  
page 21, l. 15-20.

This, however, is not by any means a correct statement of the facts.

Petitioner's policy of insurance covered all employees and all operations of the Dewey & Almy Chemical Company in California. If it failed to collect premiums on the earnings of all employees in California, it would be due solely to its own want of industry.

[fol. 198] As shown by Item 1 of the Declarations of Petitioner's policy, it covered the corporation itself; not the Pacific Coast branch. Item 1 of the Declarations of the policy provided as follows:

"Name of this Employer: Dewey & Almy Chemical Company. P. O. Address: 4000 East 8th Street, Oakland, California. Individual, Co-partnership, Corporation or Estate? Corporation."

Item 3 of the Declarations shows that "all business operations, including the operative management and superintendence thereof, conducted at or from" the corporation's premises at "4000 East 8th Street, Oakland and elsewhere in the State of California" are covered by the policy. This item of the Declarations then specifies all classes of operations covered; specifically including "chemical manufacturing", at which Tator was working when injured.

With reference to the premium on the earnings of Tator, Item 4 of the Declarations provides in part:

"The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employe of this Employer while the Policy was in force."

Thus, if the Petitioner wished to be sure it was getting premium on all employees, it had the privilege of auditing [fol. 199] the books. This audit was in fact contemplated as it was provided in Item 3 of the Declarations for a semi-annual audit.

Finally, with reference to the question of insurance coverage, we quote Item 5 of the Declarations in full, which provided:

"This Employer is conducting no other business operations at this or any other location not herein disclosed—ex-

cept as herein stated: There May Be Operation Outside State of California Not Covered Hereunder."

It is obvious from the context of the policy, especially the Declarations, that Petitioner insured the corporation; not merely its Pacific Coast branch. Petitioner intended to and did cover all the corporation's operations and all of its employees who might work in California, while they were in California. Petitioner provided for an audit of the corporation's books to enable it to collect premium on the work performed in California.

The only exclusion was in Item 5 that "operation outside State of California not covered hereunder". In view of the provisions of Item 3 covering "all business operations \* \* \* conducted at or from" the employer's premises in "Oakland and elsewhere in the State of California", the work of Respondent Tator at Oakland was specifically covered.

[fol. 200] Petitioner showed no disinclination to abide by its agreement with the employer until a serious injury occurred; in other words, it would be glad to accept the premium but reluctant to bear the loss. On this aspect of the case it is well, too, to remember that it is Petitioner alone and not the employer who is complaining; it feels that it has made a bad gamble and would like to renege on technical grounds. The sympathy which Petitioner assumes for a supposedly perplexed employer who may be faced with conflicting liabilities in various states has an extremely hollow ring. The employer here realized its liabilities under the California law and contracted with Petitioner to have such liabilities discharged if and when they materialized.

## II

### The Massachusetts Law Does Not Provide for an Exclusive Remedy for the Injuries Suffered

A. It is admitted that there was but one contract of employment.

It is conceded by Respondent Tator that there was but one contract of employment; that such contract of employment was entered into in Massachusetts, and that the employment was continuous thereafter. It was argued by Petitioner that in view of this fact the law of Massachusetts provides an

exclusive remedy, to the exclusion of the law of California. For this reason it is necessary to analyze the laws of both [fol. 201] states.

B. Section 24 of the Massachusetts Act restricting an employee entering into a contract of employment there from prosecuting an action for "*damages*" in another jurisdiction has no bearing on this case.

Section 24 of the Workmen's Compensation Act of Massachusetts provides as follows:

"An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance. An employee who has given notice to his employer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve."

Annotated Laws of Massachusetts, Chapter 152, Section 24.

[fol. 202] Under this section it will be noted first that, as to injuries occurring in Massachusetts, the employee comes under the Massachusetts Compensation Act and foregoes his common-law action in Massachusetts unless he reserves the right to sue at common-law in that state at the time of entering into the employment contract.

Secondly, Section 24 of the Massachusetts Act provides, as to injuries occurring outside of that state, that unless the employee gives the employer written notice at the time of entering into the contract of employment of the fact that he is claiming such right, he "shall be held to have waived his right of action \* \* \* under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries \* \* \*."

It might logically be contended by Petitioner that under this second provision of Section 24 of the Massachusetts

Act Respondent Tator waived his right to sue for "damages" in California for an injury occurring here. However, the benefits of the California Compensation Act are in no sense "damages" and a waiver of the right to sue for "damages", even if such waiver is valid, cannot be construed as a waiver of the right to prosecute a claim for "compensation".

The employer in this case had two policies of insurance; the policy issued by the Hartford Accident & Indemnity Company in Massachusetts and the policy issued by Petitioner Pacific Employers Insurance Company in California. [fol. 203] The Hartford policy was twofold. As to liability for "compensation" it provided that the Hartford would assume liability of the employer under the Workmen's Compensation Law of Massachusetts "and none other". As to "liability for damages" the policy of the Hartford separately and specifically agreed "to indemnify this employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States \* \* \*".

Under Section 29 (a) of the California Compensation Act employers in California must insure "against liability to pay compensation in one or more insurance carriers duly authorized to write compensation insurance in this state", or secure from the Industrial Accident Commission a "certificate of consent to self-insure". In the latter case the employer must post a bond or securities to guarantee that it will discharge its liability to pay compensation.

Under Section 29 (b) of the California Act, if the employer has failed either to secure compensation insurance coverage in California or to secure a certificate of self-insurance in California, then such employer is liable both to a proceeding for compensation before the Commission and also, in addition thereto, to a suit for "damages". Section 29 (b) provides as follows:

[fol. 204] "*Proceedings where payment is unsecured.*—If any employer shall fail so to secure the payment of compensation, any injured employee or his dependents may proceed against such employer by filing an application for compensation with the commission, and, in addition thereto, such injured employee or his dependents may bring an action at law against such employer for damages, the same

as if this act did not apply, and shall be entitled in such action to the right to attach the property of the employer, at any time upon or after the institution of such action, in an amount to be fixed by the court, to secure the payment of any judgment which may ultimately be obtained. Such judgment shall include a reasonable attorney's fee to be fixed by the court. The provisions of the Code of Civil Procedure, except in so far as they may be inconsistent with this act, shall govern the issuance of and proceedings upon such attachment; provided, that if as a result of such action for damages a judgment is obtained against such employer in excess of the compensation awarded under this act, the compensation awarded by the commission, if paid, or if security approved by the court be given for its payment, shall be credited upon such judgment; provided further, that in such action it shall be presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof [fol. 205] shall rest upon the employer, to rebut the presumption of negligence. In such proceeding it shall not be a defense to the employer that the employee may have been guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow-servant. No contract, rule or regulation shall be allowed to restore to the employer any of the foregoing defenses."

Deering's General Laws, Act 4749, Section 29 (b).

In the instant case, if Respondent Tator had, when entering into his contract of employment, reserved the right to sue for "damages" in other states than Massachusetts, for injuries occurring in such other states, he could only sue for "damages" in California if his employer did not have compensation insurance or a self-insuring certificate, either of which provide for the payment of "compensation" benefits under the California Act.

The fact is, of course, that Tator's employer had compensation insurance coverage in California with Petitioner. Therefore, it would have availed Tator nothing to reserve a right to sue for "damages" in California at the time of entering into his contract of employment in Massachusetts.

If Tator's employer had not secured compensation insurance in California (or a certificate of self-insurance), the question of whether or not he reserved his right to sue for

[fol. 206] damages in California at the time of entering into the contract of employment in Massachusetts might have some bearing on his right of election of remedies following his injury, but since his employer had insurance coverage in California, he can under no circumstances sue for damages here, and the fact that he failed to reserve such right at the time of entering into his contract of employment in Massachusetts is not now material in any way in a decision of this case. He is not suing "to recover damages for personal injuries", the only thing he is restricted from doing by the provisions of the Massachusetts section.

C. There is a clear distinction between "*damages*" and "*compensation*".

The Workmen's Compensation Act of California separately defines "*compensation*" and "*damages*". Subdivision 3 of Section 3 defines "*compensation*" as follows:

"The term 'compensation' means compensation under this act and includes every benefit of payment conferred by sections six to thirty-one, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence."

Subdivision 5 of the same section separately defines "*damages*" as follows:

"The term 'damages' means the recovery allowed in an action at law as contrasted with compensation under this act."

[fol. 207] The two terms as above defined by the California Act are mutually exclusive.

Section 29 (b) above set forth at pages 9 and 10 ante, allows an employee to proceed before the Commission for "*compensation*" and also to file an action for "*damages*" where the employer is uninsured; thus clearly recognizing the distinction between the two. The distinction is, moreover, recognized in the reported decisions in California.

*"The obvious intent of the act was to substitute its procedure for the former method of settling disputes arising between those occupying the strict relationship of master and servant, or employer and employee, by means of actions for damages . . ."* (Italics ours.)

Cooper vs. Industrial Acc. Com., 177 Cal. 685, at 687.

*"As has been pointed out, the benefits of this law are not provided as an indemnity for negligent acts committed or as compensation for legal damages sustained, but is an economic insurance measure to prevent a sudden break in the contribution of the worker to society, by his accidental death in the course of his employment."* (Italics ours.)

Moore Shipbuilding Corp. vs. Ind. Acc. Com., 185 Cal. 200, at 205.

[fol. 208] D. Section 26 of the Massachusetts Act, giving an employee injured outside of that state the benefits of the Compensation Act, is merely permissive.

Section 26 of the Massachusetts Act provides as follows:

"If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or [fol. 209] undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, is ordered by an insured person, or by a person exercising superintendence on behalf of such insured person, to perform work which is not in the usual course of such trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee."

Annotated Laws of Massachusetts, Chapter 152, Section 26.

Under this section it is first provided that where an employee has waived his common-law rights by not claiming them, he shall be paid compensation in accordance with the schedule outlined in the Act, whether his injury occurs in Massachusetts or elsewhere.

However, it is next provided that if an employee has given notice of his intent to claim rights of action under the laws of another jurisdiction, he shall not be entitled to collect compensation in Massachusetts.

The first provision is clearly permissive. The second provision carries a restriction on the permission granted to obtain benefits in Massachusetts; to the extent that an employee who has definitely elected and notified his employer of his election to claim under the laws of another jurisdiction is denied permission to collect compensation benefits in Massachusetts.

As Tator is not pressing a claim to benefits under the Massachusetts Act, Section 26 of such Act has no bearing on this case. It is not, therefore, incumbent upon this Court to decide whether Tator is restricted by the second provision above noted from claiming the rights granted in the first provision. Whether Massachusetts would allow him to proceed there for compensation is a matter solely for the determination of the Massachusetts tribunals.

### III

#### Petitioner's Authorities With Reference to Conflicts of Law Based on Statute Providing Exclusive Remedies Are Not Controlling under the Statutes Here in Question

Petitioner here relies principally upon the decision in Bradford Electric Light Co. vs. Jennie M. Clapper, 286 U. S. 145, 76 L. Ed. 1026. A reading of such case fails to sustain the contentions for which it is quoted.

The facts of that case were that an employee was hired in Vermont and was sent by the employer to do some incidental work in New Hampshire. The employee was killed in New Hampshire. An action "for damages" was brought in the New Hampshire court by the administratrix of the decedent's estate. This action was transferred to the federal court on the grounds of diversity of citizenship. The action was prosecuted upon and under the pro-

visions of the Employers' Liability and Workmen's Compensation Act of New Hampshire in the federal court. The defendant pleaded as a defense to the action under the New Hampshire law the provisions of the Vermont Workmen's Compensation Act. The provision of the Vermont Act in question provided as follows:

*"Right to Compensation Exclusive: The rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement."* (Italics ours.)

Vermont General Laws, Chapter 241, Section 5774.

It will be noted that at the outset of such section it is provided that the right to compensation under the Vermont Act is "exclusive". There is no such provision in the Massachusetts Act. Further, the quoted section of the Vermont Act, relied on by the defendant in the Clapper case, provides that the rights and remedies granted by the Vermont compensation act "shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury". This provision is obviously much more all inclusive than that of the Massachusetts section Petitioner relies on. As to the further provision of the Vermont section to the effect that "the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state", it is obvious that there can be no escape from the intent of the Vermont legislature. The Massachusetts Act, under Section 24 above noted, however, excludes only actions "for damages" in other jurisdictions.

The importance of the fact that the action in the Clapper case was one for damages as opposed to one for compensa-

tion was pointed out by the Court in the following language:

"If the accident had happened in Vermont, the statute plainly would have precluded the bringing of an action for damages in New Hampshire under its employers' liability act. For such action is predicated on a tort; and in Vermont an injury resulting from the employer's negligence [fol. 213] is not a tort, if the provisions of the Compensation Act have been accepted. The question is whether the fact that the injury occurred in New Hampshire leaves its courts free to subject the employer to liability as for a tort. That is, may the New Hampshire courts disregard the relative rights of the parties as determined by the laws of Vermont where they resided and made the contract of employment; or must they give effect to the Vermont Act, and to the agreement implied therefrom, that the only right of the employee against the employer, in case of injury, shall be the claim for compensation provided by the statute?"

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1932.

Further, the Court did not go so far in the Clapper case as to hold that in all circumstances the law of the state where the employment took place would be held to supersede the law of the forum where the injury occurred.

"We have no occasion to consider whether if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under New Hampshire law."

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1037.

In other words, it was only on the limited and special facts found in the record of the Clapper case that the Court [fol. 214] held that the law of Vermont should supersede that of New Hampshire; clearly indicating that if the facts were in any way materially varied it might not have rendered the same decision.

The Court further held that there was no showing that it would be contrary to the public policy of New Hampshire to prevent the application of its law in the case before it.

The Court stated that there was no adequate basis for holding that the denial of recovery under the New Hampshire law would be obnoxious to the public policy of such state, and stated:

"The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the State's interest would be subserved, under such circumstances, by burdening its courts with this litigation."

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1037.

Because of the importance of the concurring opinion of Mr. Justice Stone in the Clapper case, the importance of which Petitioner concedes by referring to it, we herewith set it forth in full. In view of the fact that it is a concurring opinion, it follows that it must be held to be in accord with the opinion of the Court and not in conflict with the decision itself.

[fol. 215] "I agree that in the circumstances of the present case, the courts of New Hampshire, in giving effect to the public policy of that state, would be at liberty to apply the Vermont statute and thus, by comity, make it the applicable law of New Hampshire. In the absence of any controlling decision of the New Hampshire courts, I assume, as does the opinion of the Court, that they would do so and that what they would do we should do. Hence, it seems unnecessary to decide whether that result could be compelled, against the will of New Hampshire, by the superior force of the full faith and credit clause.

"If decision of that question could not be avoided, I should hesitate to say that the Constitution projects the authority of the Vermont statute across state lines into New Hampshire, so that the New Hampshire courts, in fixing the liability of the employer for a tortious act committed within the state, are compelled to apply Vermont law instead of their own. The full faith and credit clause has not hitherto been thought to do more than compel recognition, outside the state, of the operation and effect of its laws upon persons and events within it.

"It is true that in this case the status of employer and employee, terminable at will, was created by Vermont laws

operating upon them while they were within that state. I assume that the fact of its creation there must be recognized elsewhere, whenever material. But I am not prepared to say that that status, voluntarily continued by employer and employe and given a locus in New Hampshire by their presence within the state, may not be regulated there according to New Hampshire law, or that the legal consequences of acts of the employer or employe there, which grow out of or affect the status in New Hampshire, must, by mandate of the Constitution, be either defined or controlled, in the New Hampshire courts, by the laws of Vermont rather than of New Hampshire.

"The interest, which New Hampshire has, in exercising that control, derived from the presence of employer and employe within its borders, and the commission of the tortious act there, is at least as valid as that of Vermont, derived from the fact that the status is that of its citizens and originated when they were in Vermont, before going to New Hampshire. I can find nothing in the history of the full faith and credit clause, or the decisions under it, which lends support to the view that it compels any state to subordinate its domestic policy, with respect to persons and their acts within its borders, to the laws of any other. On the contrary, I think it should be interpreted as leaving the courts of New Hampshire free, in the circumstances now presented, either to apply or refuse to apply the law of [fol. 217] Vermont, in accordance with their own interpretation of New Hampshire policy and law."

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1037-1038. (Authorities cited in concurring opinion omitted.)

We respectfully call the attention of the Court to the fact that Justice Stone stated that he was not prepared to say that the status voluntarily continued by the employer and employee and given a locus in New Hampshire by the presence of the employer and employee in that state might not be regulated there according to the New Hampshire law. Further, that he considered the interest which New Hampshire had in exercising control over the status of the parties and the adjudication of rights arising from tortious acts there at least as valid as the interest of Vermont; that he found nothing in the full faith and credit clause of the Constitution which would compel any state to subordinate its

domestic policy, with respect to persons and their acts within its borders, to the laws of any other state.

The fact that the Petitioner has misconstrued the effect of the Clapper case is illustrated by the decision of the Supreme Court of the United States in State of Ohio vs. Chattanooga Boiler & Tank Co. (77 L. Ed. 872), decided by the Supreme Court May 22, 1933. This follows by slightly over a year the decision in the Clapper case which [fol. 218] was handed down May 16, 1932.

In the Chattanooga case the employee was hired in Tennessee by a Tennessee employer. He was sent to Ohio to erect a steel tank, and was injured in Ohio as a result of which he died. Proceedings were brought before the Ohio Commission and an award made there against the employer and the state insurance fund of Ohio. The employer failed to pay the award and the state insurance fund did pay it. Thereupon, the State of Ohio brought an original action in the Supreme Court of the United States to recover from the employer the amount that it had paid pursuant to the award of the Ohio Commission.

The employer set up as a defense to the action by the State of Ohio the decision in the Clapper case; claiming that the Ohio Commission had no power to award compensation for death of an employee where injury occurred in Ohio, where the employment took place in Tennessee and the employee was only temporarily in Ohio at the time of injury. Referring to the defense set up, the Supreme Court stated:

“In the Clapper case it was held that the Vermont Workmen’s Compensation Act was a defense to an action brought in New Hampshire under the New Hampshire Act to recover for the death in that State of a Vermont resident who had been employed by a Vermont company, pursuant to a contract made in Vermont; because: ‘*It clearly was the purpose of the Vermont Act to preclude any recovery by [fol. 219] proceedings brought in another State for injuries received in the course of a Vermont employment.*’ 286 U. S. at 153, 76 L. Ed. 1031, 52 S. Ct. 571, 82 A. L. R. 701. The Tennessee Act is different. It is true that it provides that ‘when an accident happens while the employe is elsewhere than in this State, which would entitle him or his dependents to compensation had it happened in this State, the employe or his dependents shall be entitled to compensation under this act if the contract of employment was made

in this State, unless otherwise expressly provided by said contract,' Tenn. Code, sec. 6870; and that 'the rights and remedies herein granted to an employe subject to this Act on account of personal injury or death by accident shall exclude other rights and remedies of such employe, his personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death.' Id., sec. 6859. But, as construed and applied by the highest court of Tennessee, the statute does not preclude recovery under the law of another State. And the full faith and credit clause does not require that greater effect be given the Tennessee statute elsewhere than it is given in the courts of that State.'" (Italics ours.)

State of Ohio vs. Chattanooga etc. Co., 77 L. Ed. 872, 873-874.

[fol. 220] The Massachusetts courts have held that where a recovery has been allowed out of the state, the employee may recover in Massachusetts for the difference between the recovery he has had and the amount which he might otherwise have received in Massachusetts.

In McLaughlin's Case, 274 Mass. 217, 174 N. W. 338, the employee was hired in Massachusetts but was injured in New Hampshire and paid compensation under the New Hampshire law. The Court stated:

"The money received should be deducted from the amount he is permitted to recover, but he retains the protection of the Massachusetts act, \* \* \*."

McLaughlin's Case, 174 N. E. 338, 339.

Likewise, in Migue's Case, 183 N. E. 847, where the employee was hired in Massachusetts but injured in Rhode Island and received compensation under the Rhode Island statute, it was held that he was entitled to compensation under the Massachusetts Act, with credit to be given for the amount paid under the Rhode Island agreement.

It is true in the latter case that the Supreme Court of Massachusetts stated that in their opinion the Rhode Island proceeding had no standing in law under the decision in Bradford Electric Light Co. vs. Clapper, *supra*, and stated that Massachusetts had assumed exclusive jurisdiction of rights to compensation where the contract of employment [fol. 221] was made in Massachusetts. However, such lan-

guage was merely incident to their statement that the Industrial Accident Board and the courts of Massachusetts were not bound by the acts of the other jurisdiction, and they specifically state their recognition of the allowance of recovery in other jurisdictions by stating that their purpose in the McLaughlin case and in the Migue case was to prevent a double recovery.

Lest it be contended that the decision of the United States Supreme Court in State of Ohio vs. Chattanooga Boiler & Tank Co., *supra*, would by reason of its language compel California to forego the application of its compensation act in favor of Massachusetts in the instant case, we again refer to the decision of the court in the Chattanooga case. In that case the Tennessee court had held that the applicant, having brought her action in Ohio, was precluded from bringing an action in Tennessee; thereby recognizing the validity of the Ohio proceeding. The Supreme Court of the United States, therefore, held that as the State of Tennessee through its courts had seen fit to concede the jurisdiction of the Ohio Commission, the employer, a resident of Tennessee, could not object.

The decision of the Tennessee Court (*Tidwell vs. Chattanooga Boiler & Tank Co.*, 45 S. W. (2d) 528) arose when the widow sued the employer under the Tennessee Act. The employer set up the proceedings in Ohio as a defense. The Tennessee Supreme Court held such defense good. [fol. 222] The Supreme Court of the United States, in commenting upon the above state of facts, stated:

“In view of this decision, we have no occasion to consider differences in phraseology between the Tennessee statute and that of Vermont.”

*State of Ohio vs. Chattanooga etc. Co.*, 77 L. Ed. 872, 874.

When it is noted that the Massachusetts statute only excludes or prevents the prosecution of actions for “damages” in other jurisdictions where injuries may occur, there can be no doubt but what, under the decision in the Chattanooga case, the Supreme Court of the United States would consider such language of the Massachusetts Statute, and that if the contention made heretofore with reference to the proper construction of such language were held to be valid, would hold the Massachusetts statute not sufficiently

broad to prevent California from taking jurisdiction under its act of an injury occurring here.

Petitioner also relies on Cole vs. Industrial Commission, 187 N. E. 520, where the Illinois Court held the Indiana law provided the exclusive remedy. The following excerpts from that case show how totally exclusive the Indiana Act was, as contrasted with the Massachusetts Act.

"There was in force and effect in Indiana a Workmen's Compensation Act (Burns' Ann. St. Supp. 1929, sec. 9465); and that section 20 of said act is as follows:

[fol. 223] 'Every employer and employee under this act shall be bound by the provisions hereof whether injury by accident or death resulting from such injury occurs within the state or in some other state or in a foreign country.' "

Cole vs. Ind. Com., 187 N. E. 520, 521.

"Section 6 of that statute (section 9451) provides that 'the rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or death.' "

Cole vs. Ind. Com., 187 N. E. 520, 521.

Commenting on the decision in the Clapper case, the Illinois Court said:

"The Vermont act and the Indiana act are virtually the same in respect to the exclusion of all rights and remedies other than those afforded by the act itself. Mr. Justice Brandeis, commenting on the effect of the statute in a case where the employee was injured in another state, said: 'It clearly was the purpose of the Vermont act to preclude any recovery by proceedings brought in another state for [fol. 224] injuries received in the course of a Vermont employment. The provisions of the act leave no room for construction.' "

Cole vs. Ind. Com., 187 N. E. 520, 521.

Certainly the situation is entirely different here. The logical construction of the Massachusetts Act leaves Tator free to collect compensation in California; in fact, no other construction is tenable.

## IV

**California Has a Greater Interest Than Massachusetts and  
Public Policy of California Requires That it Take Jurisdiction**

The latest case by the United States Supreme Court is, of course, that of *Alaska Packers Assn. vs. Indus. Acc. Com. of California*, decided March 11, 1935, reported in 79 L. Ed. 554. The facts of such case are too well known to the California courts to require a recitation of them. We are concerned here only with the language of the United States Supreme Court having a bearing upon this case. We particularly call the attention of the Court to the following language:

“In the case of statutes, the extra-state effect of which Congress has not prescribed, where the policy of one state statute comes into conflict with that of another, the necessity of some accommodation of the conflicting interests of the two states is still more apparent. A rigid and literal [fol. 225] enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. See *Olmsted v. Olmsted*, 216 U. S. 386, 54 L. ed. 530, 30 S. Ct. 292, 25 L. R. A. (N. S.) 1192; *Aetna L. Ins. Co. v. Dunken*, *supra* (266 U. S. 393, 69 L. ed. 346, 45 S. Ct. 129).

“The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both the *conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the govern-*

[fol. 226] *mental interests of each jurisdiction, and turning the scale of decision according to their weight.*

"The enactment of the present statute of California was within state power and infringes no constitutional provision. *Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted.* One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. It follows that not every statute of another state will override a conflicting statute of the forum by virtue of the full faith and credit clause; that the statute of a state may sometimes override the conflicting statute of another, both at home and abroad; and, again, that the two conflicting statutes may each prevail over the other at home, although given no extraterritorial effect in the state of the other.

"This was fully recognized by this Court in *Bradford Electric Light & P. Co. v. Clapper, supra* (286 U. S. 157-162, 76 L. ed. 1033-1037, 52 S. Ct. 571, 82 A. L. R. 696). There, upon an appraisal of the governmental interests of the two states, *Vermont* and *New Hampshire*, it was held that the Compensation Act of *Vermont*, where the status of employer and employee was established, should prevail [fol. 227] over the conflicting statute of *New Hampshire*, where the injury occurred and the suit was brought. In reaching that conclusion, weight was given to the following circumstances: that liability under the *Vermont* Act was an incident of the status of employer and employee created within *Vermont*, and as such continued in *New Hampshire* where the injury occurred; that it was a substitute for a tort action, which was permitted by the statute of *New Hampshire*; that the *Vermont* statute expressly provided that it should extend to injuries occurring without the state and was interpreted to preclude recovery by proceedings brought in any other state; and that there was no adequate basis for saying that the compulsory recognition of the *Vermont* statute by the courts of *New Hampshire* would be obnoxious to the public policy of that state.

"If, for the reasons given, the *Vermont* statute was held to override the *New Hampshire* statute in the courts of *New Hampshire*, it is hardly to be supposed that the Constitution would require it to be given any less effect in *Vermont*,

even though the New Hampshire statute were set up as a defense to proceedings there. Similarly, in the present case, only if it appears that, in the conflict of interests which have found expression in the conflicting statutes, the interest of Alaska is superior to that of California, is there rational basis for denying the courts of California the right [fol. 228] to apply the laws of their own state. While in *Bradford Electric Light & P. Co. v. Clapper, supra*, it did not appear that the subordination of the New Hampshire statute to that of Vermont, by compulsion of the full faith and credit clause, would be obnoxious to the policy of New Hampshire, the Supreme Court of California has declared it to be contrary to the policy of the State to give effect to the provisions of the Alaska statute and that they conflict with its own statutes.

"There are only two differences material for present purposes, between the facts of the Clapper Case and those presented in this case: the employee here is not a resident of the place in which the employment was begun, and the employment was wholly to be performed in the jurisdiction in which the injury arose. Whether these differences, with a third—that the Vermont statute was intended to preclude resort to any other remedy even without the state—are, when taken with the differences between the New Hampshire and Alaska compensation laws, sufficient ground for withholding or denying any effect to the California statute in Alaska, we need not now inquire. But it is clear that they do not lessen the interest of California in enforcing its compensation act within the state, or give any added weight to the interest of Alaska in having its statute enforced in [fol. 229] California. We need not repeat what we have already said of the peculiar concern of California in providing a remedy for those in the situation of the present employee. Its interest is sufficient to justify its legislation and is greater than that of Alaska, of which the employee was never a resident and to which he may never return. Nor should the fact that the employment was wholly to be performed in Alaska, although temporary in character, lead to any different result. It neither diminishes the interest of California in giving a remedy to the employee, who is a member of a class in the protection of which the state has an especial interest, nor does it enlarge the interest of Alaska whose temporary relationship with the employee has been severed.

"The interest of Alaska is not shown to be superior to that of California. *No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statutes of Alaska be given that effect.*" (Italics ours.)

Alaska Packers Assn. vs. Ind. Acc. Com. of Calif.,  
79 L. Ed. 554, 561-562.

Referring to the above language, it is apparent that California has a greater interest in the instant case than has [fol. 230] Massachusetts. The employee suffered his injury here in a California industry. He received his medical treatment here and his hospitalization. Were he not properly and promptly compensated, this man, more than likely, would become a charge on the state. It is also likely that citizens of this state, by denial of the enforcement of the California Compensation Act, would be denied a proper recovery for the expenditures made for medical attention, nursing services, hospitalization, etc.

To accede to the contention of the defendant in this case, made on the flat basis that the employee was merely hired in Massachusetts, would result in this: an employer might hire all of its employees for a very extensive industry in California in some other state whose compensation act provided for limited benefits and further provided that employees hired in such state could have no other benefits than those there prescribed. If the rule contended for by the defendant were then given application, California doctors, hospitals, nurses and other private individuals, as well as the employees themselves, would be robbed of the beneficial provisions intended by the California Compensation Act and its purpose would be defeated. As stated by the Supreme Court in the Alaska Packers case, *supra*, it is obvious that this cannot be allowed to happen and that the superior interest of California entitles it to take jurisdiction.

[fol. 231] Under the California Act the remedy given is exclusive.

"'When the specified conditions exist, the remedy provided by the act is exclusive of all other statutory or common law remedies.' (Alaska Packers' Assn. v. Industrial Acc. Com., 200 Cal. 579, 583 (253 Pac. 926, 928).)"

Pecor vs. Norton-Lilly Co., 111 Cal. App. 241, 243.

All the jurisdictional elements except the chance making of the contract of hire are centered in California. The actual work of the employment was here; the employer's business was permanently located here; the injury occurred here. The parties, including Petitioner, were all in California. In this regard it is necessary to keep in mind the fact that the doctors are "parties" before the Commission. (Independence Indemnity Co. vs. Ind. Acc. Com., 2 Cal. (2d) 411.) Petitioner's contention that the action could properly be tried in Massachusetts certainly imposes on reason.

Further, under the California Constitution, which evidences without question the public policy of this state, it is provided in Article XX, Section 21, that the legislature is expressly vested with plenary power to create and enforce a complete system of workmen's compensation; enforce a liability on the part of any or all persons to compensate their workmen for injury or disability. It further specifies that [fol. 232] a complete system of workmen's compensation includes provision for the comfort, health, and safety and general welfare of any and all workmen and their dependents; that it likewise contemplates full provision for medical, surgical, hospital and other treatment; that it contemplates full provision for regulating insurance coverage and full provision for vesting of power and authority in an administrative body to insure the enforcement of the liability created. It then specifically provides, "all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government."

Thus, to invoke the Massachusetts statute here to defeat the application of the California statute would be directly contrary to the public policy of this state, and under the above enumerated decisions of the United States Supreme Court such action is forbidden; they specifically holding that one state's statute may not be invoked in a sister state where the statute of the first state is contrary to the public policy of the second.

Wherefore, it is respectfully prayed that the Petition for Writ of Review be denied.

Dated August 18, 1936.

Keith & Creede, Attorneys for Respondent Kenneth Tator.

[fol. 233] *Duly sworn to by Frank J. Creede. Jurat omitted in printing.*

[fol. 234]

[File endorsement omitted]

IN DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST  
APPELLATE DISTRICT, DIVISION TWO

[Title omitted]

ANSWER OF RESPONDENT INDUSTRIAL ACCIDENT COMMISSION TO  
PETITION FOR WRIT OF REVIEW—Filed September 10, 1936

There is on file with the Court an Answer to Petition for Writ of Review filed on behalf of Respondent Kenneth Tator and entitled "Respondent Kenneth Tator's Answer to Petition for Writ of Review". Said Answer quite exhaustively and ably covers the law applicable to the case and the Respondent Commission respectfully refers the Court to said Answer and feels that it is unnecessary to burden the Court with another lengthy brief in support of Respondents' position in this matter.

The Commission believes that it reached the proper conclusion in the case, i. e., that it was correct in assuming jurisdiction over Respondent Tator's claim. The United States Supreme Court in a case which arose from this jurisdiction [fol. 235] has stated that the full faith and credit clause of the United States Constitution is to be cautiously applied and that to apply said clause universally in cases of this character would lead to the absurd result that whenever there is an apparent conflict the statute of each state must be enforced in the courts of the other state but cannot be enforced in its own courts.

Alaska Packers Assn. vs. Ind. Acc. Com., 79 L. Ed. 554; 55 Sup. Ct. Rep. 518.

The United States Supreme Court in the aforementioned case has stated that the test is as follows:

"\* \* \* the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

In accordance with the test set out by the United States Supreme Court in the above decision, the Respondent Commission submits that the Commission correctly appraised

the governmental interests involved in the present case and rightly assumed jurisdiction over Respondent Tator's claim. The injury of course occurred in California. In addition to that fact, the employer carried on an extensive business in California and operated a large plant in this state. That [fol. 236] plant was without question under the jurisdiction of the Industrial Accident Commission of California insofar as safety rules and regulations are concerned and insofar as employees who are permanently employed at said plant. Likewise it is submitted that an employee comes under the jurisdiction of the California Commission where he is sent from the Massachusetts office of the employer to the California plant for an indefinite period and where his salary is paid by the California plant for the period of time while the employee works in California.

To paraphrase the language of the United States Supreme Court in the *Alaska Packers*' case, *supra*, no persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in these circumstances the full faith and credit clause does not require that the statutes of Massachusetts be given that effect.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Review should be denied.

Everett A. Corten, Attorney for Respondent Industrial Accident Commission.

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[fol. 237] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ANSWER OF RESPONDENT INDUSTRIAL ACCIDENT COMMISSION  
TO PETITION FOR HEARING—Filed November 17, 1936

There is on file with the Court an Answer to Petition for Hearing filed on behalf of Respondent Kenneth Tator and entitled "Respondent Kenneth Tator's Answer To Petition For Hearing." Said Answer quite exhaustively and ably covers the law applicable to the case and the Respondent Commission respectfully refers the Court to said Answer and feels that it is unnecessary to burden the Court

with another lengthy brief in support of Respondents' position in this matter.

The Commission believes that it reached the proper conclusion in the case, i. e., that the Commission was correct in assuming jurisdiction over Respondent Tator's claim. The United States Supreme Court in a case which arose from this jurisdiction has stated that the full faith and [fol. 238] credit clause of the United States Constitution is to be cautiously applied and that to apply said clause universally in cases of this character would lead to the absurd result that whenever there is an apparent conflict the statute of each state must be enforced in the courts of the other state but cannot be enforced in its own courts.

Alaska Packers Assn. vs. Ind. Acc. Com., 79 L. Ed. 554; 55 Sup. Ct. Rep. 518.

The United States Supreme Court in the aforementioned case has stated that the test is as follows:

"• • • the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

In accordance with the test set out by the United States Supreme Court in the above decision, the Respondent Commission submits that the Commission correctly appraised the governmental interests involved in the present case and rightly assumed jurisdiction over Respondent Tator's claim. The injury of course occurred in California. In addition to that fact, the employer carried on an extensive business in California and operated a large plant in this state. That plant was without question under the jurisdiction [fol. 239] of the Industrial Accident Commission of California insofar as safety rules and regulations are concerned and also insofar as employees who are permanently employed at said plant. Likewise it is submitted that an employee comes under the jurisdiction of the California Commission where he is sent from the Massachusetts office of the employer to the California plant for an indefinite period and where his salary is paid by the California plant

for the period of time while the employee works in California.

To paraphrase the language of the United States Supreme Court in the Alaska Packers' case, *supra*, no persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and under these circumstances the full faith and credit clause does not require that the statutes of Massachusetts be given that effect.

For the foregoing reasons it is respectfully submitted that the Petition for Hearing should be denied.

Everett A. Corten, Attorney for Respondent Industrial Accident Commission.

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[fol. 240] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ANSWER OF KENNETH TATOR TO PETITION FOR HEARING

Petitioner, Pacific Employers Insurance Company, requests that a hearing be granted by this Court following the denial of a petition for writ of review by the District Court of Appeals, First Appellate District, Division Two.

The Question Involved

The petitioner has misstated the question involved and we believe that the questions presented should properly be stated thus:

1. Whether the law of Massachusetts, which deprives an employee who enters into his contract of employment in that state from prosecuting an action for "damages" in another state in which an injury may occur can be held to deprive him under any circumstances of a right to prosecute a claim for "compensation" in some other state in which he may be injured.

[fol. 241] 2. Whether the mere fact that an employee enters into his contract of employment with a corporation whose main office is in the State of Massachusetts automatically excludes such employee from the benefits of the Workmen's Compensation Act of the State of California where he is assigned to a branch factory of such corporation

in the State of California and is injured while prosecuting his employment in such branch factory in California; that is, whether or not the mere making of the contract in Massachusetts and the fact that the company's head office is there is of sufficient importance to render the interests of Massachusetts greater than those of California where the work is actually performed, where the employee is injured, where the factory is located, where the doctors and hospitals who treat him are situated, and where the employer is insured against liability under the California Compensation Act.

#### Petitioner Presents no New or Novel Point of Law

The matters presented by petitioner here were fully briefed before the Respondent Commission and were fully briefed before the District Court (much more fully than petitioner has briefed them in presenting its petition for hearing here). The question of comity and conflict of laws between compensation acts of various states has heretofore been presented on numerous occasions to the appellate courts of this state, and particularly to this Court. The rul-[fol. 242] ing of the Commission in the instant case is in conformity with the prior decisions of this Court and in conformity with the rulings of the United States Supreme Court; particularly the recent ruling of the Supreme Court of the United States in *Alaska Packers vs. Ind. Acc. Com. of Calif.*, 55 Sup. Ct. Rep. 518, in which opinion the Supreme Court of the United States affirmed in all respects the holding of this Court.

The matter is not therefore a proper one for hearing before this Court.

#### I

**The Workmen's Compensation Act of Massachusetts is Not Exclusive and Does Not Prevent an Employee Entering Into a Contract of Employment in Massachusetts from Prosecuting a Claim for Compensation in California for an Injury Occurring in California**

A. It is admitted that there was but one contract of employment.

It is conceded by Respondent Tator that there was but one contract of employment; that such contract of employment

was entered into in Massachusetts, and that the employment was continuous thereafter. It was argued by Petitioner that in view of this fact the law of Massachusetts provides an exclusive remedy, to the exclusion of the law of California. For this reason it is necessary to analyze the laws of both states.

B. Section 24 of the Massachusetts Act restricting an employee entering into a contract of employment there from prosecuting an action for "*damages*" in another jurisdiction has no bearing on this case.

Section 24 of the Workmen's Compensation Act of Massachusetts provides as follows:

"An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance. An employee who has given notice to his employer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve."

Annotated Laws of Massachusetts, Chapter 152, Section 24.

[fol. 244] Under this section it will be noted first that, as to injuries occurring in Massachusetts, the employee comes under the Massachusetts Compensation Act and foregoes his common-law action in Massachusetts unless he reserves the right to sue at common-law in that state at the time of entering into the employment contract.

Secondly, Section 24 of the Massachusetts Act provides, as to injuries occurring outside of that state, that unless the employee gives the employer written notice at the time of entering into the contract of employment of the fact that he is claiming such right, he "shall be held to have waived his right of action \* \* \* under the law of any other

jurisdiction in respect to an injury therein occurring, *to recover damages for personal injuries . . . .*

It might logically be contended by Petitioner that under this second provision of Section 24 of the Massachusetts Act Respondent Tator waived his right to sue for "damages" in California for an injury occurring here. However, the benefits of the California Compensation Act are in no sense "damages" and a waiver of the right to sue for "damages," even if such waiver is valid, cannot be construed as a waiver of the right to prosecute a claim for "compensation."

In the instant case, if Respondent Tator had, when entering into his contract of employment, reserved the right to sue for "damages" in other states than Massachusetts, for injuries occurring in such other states, he could only sue [fol. 245] for "damages" in California if his employer did not have compensation insurance or a self-insuring certificate, either of which provide for the payment of "compensation" benefits under the California Act.

The fact is, of course, that Tator's employer had compensation insurance coverage in California with Petitioner. Therefore, it would have availed Tator nothing to reserve a right to sue for "damages" in California at the time of entering into his contract of employment in Massachusetts.

If Tator's employer had not secured compensation insurance in California (or a certificate of self-insurance), the question of whether or not he reserved his right to sue for damages in California at the time of entering into the contract of employment in Massachusetts might have some bearing on his right of election of remedies following his injury, but since his employer had insurance coverage in California, he can under no circumstances sue for damages here, and the fact that he failed to reserve such right at the time of entering into his contract of employment in Massachusetts is not now material in any way in a decision of this case. He is not suing "to recover damages for personal injuries," the only thing he is restricted from doing by the provisions of the Massachusetts section.

C. There is a clear distinction between "damages" and "compensation."

The Workmen's Compensation Act of California [fol. 246] separately defines "compensation" and "damages."

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Subdivision 3 of Section 3 defines "compensation" as follows:

"The term 'compensation' means compensation under this act and includes every benefit of payment conferred by sections six to thirty-one, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence."

Subdivision 5 of the same section separately defines "damages" as follows:

"The term 'damages' means the recovery allowed in an action at law as contrasted with compensation under this act."

The two terms as above defined by the California Act are mutually exclusive.

Section 29 (b) of the California Workmen's Compensation Act allows an employee to proceed before the Commission for "compensation" and also to file an action for "damages" where the employer is uninsured; thus clearly recognizing the distinction between the two. The distinction is, moreover, recognized in the reported decisions in California.

*"The obvious intent of the act was to substitute its procedure for the former method of settling disputes arising between those occupying the strict relationship of master and servant, or employer and employee, by means of actions for damages . . . ."* (Italics ours.)

Cooper vs. Indus. Acc. Com.,  
177 Cal. 685, at 687.

[fol. 247] "As has been pointed out, the benefits of this law are not provided as an indemnity for negligent acts committed or as compensation for legal damages sustained, but is an economic insurance measure to prevent a sudden break in the contribution of the worker to society, by his accidental death in the course of his employment." (Italics ours.)

Moore Shipbuilding Corp. vs. Ind. Acc. Com., 185 Cal. 200, at 205.

D. Section 26 of the Massachusetts Act, giving an employee injured outside of that state the benefits of the Compensation Act, is merely permissive.

Section 26 of the Massachusetts Act provides as follows:

"If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring [fol. 248] without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation, is ordered by an insured person, or by a person exercising superintendence on behalf of such insured person, to perform work which is not in the usual course of such trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee."

Annotated Laws of Massachusetts, Chapter 152,  
Section 26.

Under this section it is first provided that where an employee has waived his common-law rights by not claiming them, he shall be paid compensation in accordance with the schedule outlined in the Act, whether his injury occurs in Massachusetts or elsewhere.

However, it is next provided that if an employee has [fol. 249] given notice of his intent to claim rights of action under the laws of another jurisdiction, he shall not be entitled to collect compensation in Massachusetts.

The first provision is clearly permissive. The second provision carries a restriction on the permission granted

to obtain benefits in Massachusetts, to the extent that an employee who has definitely elected and notified his employer of his election to claim under the laws of another jurisdiction is denied permission to collect compensation benefits in Massachusetts.

As Tator is not pressing a claim to benefits under the Massachusetts Act, Section 26 of such Act has no bearing on this case. It is not, therefore, incumbent upon this Court to decide whether Tator is restricted by the second provision above noted from claiming the rights granted in the first provision. Whether Massachusetts would allow him to proceed there for compensation is a matter solely for the determination of the Massachusetts tribunals.

## II

### Petitioner's Authorities With Reference to Conflicts of Law Based on Statute Providing Exclusive Remedies Are Not Controlling Under the Statute Here in Question.

Petitioner here relies principally upon the decision in *Bradford Electric Light Co. vs. Jennie M. Clapper*, 286 U. S. 145, 76 L. Ed. 1026. A reading of such case fails to sustain [fol. 250] the contentions for which it is quoted.

The facts of that case were that an employee was hired in Vermont and was sent by the employer to do some incidental work in New Hampshire. The employee was killed in New Hampshire. An action "for damages" was brought in the New Hampshire court by the administratrix of the decedent's estate. This action was transferred to the federal court on the grounds of diversity of citizenship. The action was prosecuted upon and under the provisions of the Employers' Liability and Workmen's Compensation Act of New Hampshire in the federal court. The defendant pleaded as a defense to the action under the New Hampshire law the provisions of the Vermont Workmen's Compensation Act. The provisions of the Vermont Act in question read as follows:

*"Right to Compensation Exclusive: The rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he is entitled to compensation under the provisions of this chapter, shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of*

kin, at common law or otherwise on account of such injury. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such an agreement." (Italics ours.)

Vermont General Laws, Chapter 241, Section 5774.

It will be noted that at the outset of such section it is provided that the right to compensation under the Vermont Act is "exclusive". There is no such provision in the Massachusetts Act. Further, the quoted section of the Vermont Act, relied on by the defendant in the Clapper case, provides that the rights and remedies granted by the Vermont compensation act "shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury". This provision is obviously much more all inclusive than that of the Massachusetts section Petitioner relies on. As to the further provision of the Vermont section to the effect that "the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state". It is obvious that there can be no escape from the intent of the Vermont legislature. The Massachusetts Act, under Section 24 above noted, however, excludes only actions "for damages" in other jurisdictions.

The Court did not go so far in the Clapper case as to hold that in all circumstances the law of the state where the employment took place would be held to supersede the [fol. 252] law of the forum where the injury occurred.

"We have no occasion to consider whether if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under New Hampshire law."

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1037.

In other words, it was only on the limited and special facts found in the record of the Clapper case that the Court

held that the law of Vermont should supersede that of New Hampshire; clearly indicating that if the facts were in any way materially varied it might not have rendered the same decision.

The Court further held that there was no showing that it would be contrary to the public policy of New Hampshire to prevent the application of its law in the case before it. The Court stated that there was no adequate basis for holding that the denial of recovery under the New Hampshire law would be obnoxious to the public policy of such state, and stated:

“The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the State’s interest would be subserved, under such circumstances, by burdening its courts with this litigation.”

[fol. 253] Bradford Electric Light Co. vs. Clapper,  
76 L. Ed. 1026, 1037.

As pointed out by the United States Supreme Court in the Clapper case, there was nothing about the public policy of the State of New Hampshire which would require it to enforce its compensation law with reference to the particular injury which occurred within its borders. In the instant case, however, the public policy of California requires that California take jurisdiction of this injury. The California Constitution, which evidences without question the public policy of this state, provides in Article XX, Section 21, that the legislature is expressly vested with plenary power to create and enforce a complete system of workmen’s compensation; enforce a liability on the part of any or all persons to compensate their workmen for injury or disability. It further specifies that a complete system of workmen’s compensation includes provision for the comfort, health and safety and general welfare of any and all workmen and their dependents; that it likewise contemplates full provision for medical, surgical, hospital and other treatment; that it contemplates full provision for regulating insurance coverage and full provision for vesting of power and authority in an administrative body to insure the enforcement of the liability created. It then specifically provides, “all of which matters are expressly declared to be the social public

policy of this State, binding upon all departments of the state government".

[fol. 254] Thus, to invoke the Massachusetts statute here to defeat the application of the California statute would be directly contrary to the public policy of this state, and under the above decision of the United States Supreme Court such action is forbidden; they specifically holding that one state's statute may not be invoked in a sister state where the statute of the first state is contrary to the public policy of the second.

Petitioner concedes the importance of the concurring opinion of Mr. Justice Stone in the Clapper case and seeks to avoid the weight of such opinion which, being a concurring opinion, is of course in accord and not in conflict with the decision of the Court itself.

We believe the following language of the concurring opinion is particularly in point in considering the case now before this Court:

"It is true that in this case the status of employer and employe, terminable at will, was created by Vermont laws operating upon them while they were within that state. I assume that the fact of its creation there must be recognized elsewhere, whenever material. But I am not prepared to say that that status, voluntarily continued by employer and employe and given a locus in New Hampshire by their presence within the state, may not be regulated there according to New Hampshire law, or that the legal consequences of acts of the employer or employe there, [fol. 255] which grow out of or affect the status in New Hampshire, must, by mandate of the Constitution, be either defined or controlled, in the New Hampshire courts, by the laws of Vermont rather than of New Hampshire.

"The interest, which New Hampshire has, in exercising that control, derived from the presence of employer and employe within its borders, and the commission of the tortious act there, is at least as valid as that of Vermont, derived from the fact that the status is that of its citizens and originated when they were in Vermont, before going to New Hampshire. I can find nothing in the history of the full faith and credit clause, or the decisions under it, which lends support to the view that it compels any state to subordinate its domestic policy, with respect to persons

and their acts within its borders; to the laws of any other. On the contrary, I think it should be interpreted as leaving the courts of New Hampshire free, in the circumstances now presented, either to apply or refuse to apply the law of Vermont, in accordance with their own interpretation of New Hampshire policy and law."

Bradford Electric Light Co. vs. Clapper, 76 L. Ed. 1026, 1037-1038. (Authorities cited in concurring opinion omitted.)

[fol. 256] It will be noted that Justice Stone considered the question of which state had the paramount interest to be the controlling question in a determination as to which law should be given force and effect and that it was his opinion that the full faith and credit clause would not compel one state to subordinate its domestic policy to the will of another state. That is what the Petitioner is asking California here to do; to submit its public policy and the welfare of its citizens to the domestic policy of Massachusetts, merely because the contract of hire was made there and the main office of the employing corporation was located there.

Petitioner mentions the case of State of Ohio vs. Chattanooga Boiler & Tank Co., 77 L. Ed. 1307, which follows by slightly over a year the decision in the Clapper case. In the Chattanooga case, despite the provision in the Tennessee Act which gave Tennessee jurisdiction over injuries occurring without its borders where the contract was made in the State of Tennessee, the Supreme Court of the United States refused to hold that Tennessee had exclusive jurisdiction in such case where the contract was made in Tennessee but where the injury occurred in Ohio. In that case, in an attempt to force the matter under the Tennessee Act and to exclude it from the Ohio Act, the decision of the Clapper case was set up. The Court, however, clearly distinguished the Clapper case in the following language:

"In the Clapper case it was held that the Vermont Workmen's Compensation Act was a defense to an action brought in New Hampshire under the New Hampshire Act to recover for the death in that State of a Vermont resident who had been employed by a Vermont company, pursuant to a contract made in Vermont; because: 'It clearly was the purpose of the Vermont Act to preclude

*any recovery by proceedings brought in another State for injuries received in the course of a Vermont employment.*

286 U. S. at 153, 76 L. Ed. 1031, 52 S. Ct. 571, 82 A. L. R. 701. The Tennessee Act is different." (Italics ours.)

State of Ohio vs. Chattanooga Co., 77 L. Ed. 1307, 873.

As previously pointed out, the Massachusetts Act is different from the Vermont Act and it does not prevent an employee who makes his contract of employment in Massachusetts from prosecuting a claim for "compensation" in California; it merely prevents him from prosecuting an action for "damages". In the present instance the employee, Tator, has prosecuted only his claim for compensation. He is not interested and has filed no action for damages.

Petitioner has failed to call to this Court's attention the fact that in McLaughlin's case, 274 Mass. 217, 174 N. E. 338 (where the employee was hired in Massachusetts and injured in New Hampshire) and in Migue's case, 183 N. E. 847 (where the employee was hired in Massachusetts and [fol. 258] injured in Rhode Island), the Massachusetts courts held that the amount of compensation paid in the first case under the New Hampshire law and in the second case under the Rhode Island statute, should be deducted from any sum which the employees might be entitled to recover in Massachusetts and that the employees should be given the balance, if any, which they would be entitled to under the Massachusetts Act. If the same rule were applied here, it is true that there would be nothing payable under the Massachusetts Act since the California benefits exceed those of Massachusetts. However, that is a mere chance and it does not change the fact that the Massachusetts courts have recognized the right to receive compensation in other states where the man was injured in such other state, even though employed in Massachusetts. Likewise, it disposes of any possibility of a double recovery, since the Massachusetts courts would deduct from any amount the employee might have coming in Massachusetts the amount he has been paid in California.

Petitioner also relies on Cole vs. Industrial Commission, 187 N. E. 520, where the Illinois Court held the Indiana law provided the exclusive remedy. The following excerpts

from that case show how totally exclusive the Indiana Act was, as contrasted with the Massachusetts Act.

"There was in force and effect in Indiana a Workmen's Compensation Act (Burns' Ann. St. Supp. 1929, sec. 9465); and that section 20 of said act is as follows:

[fol. 259] 'Every employer and employee under this act shall be bound by the provisions hereof whether injury by accident or death resulting from such injury occurs within the state or in some other state or in a foreign country.'"

Cole vs. Ind. Com., 187 N. E. 520, 521.

"Section 6 of that statute (section 9451) provides that 'the rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or death.'"

Cole vs. Ind. Com., 187 N. E. 520, 521.

Commenting on the decision in the Clapper case, the Illinois Court said:

"The Vermont act and the Indiana act are virtually the same in respect to the exclusion of all rights and remedies other than those afforded by the act itself. Mr. Justice Brandeis, commenting on the effect of the statute in a case where the employee was injured in another state, said: 'It clearly was the purpose of the Vermont act to preclude any recovery by proceedings brought in another state for injuries received in the course of a Vermont employment. *The provisions of the act leave no room for construction.*'" (Italics ours.)

Cole vs. Ind. Com., 187 N. E. 520, 521.

It will be noted that the Illinois Court stated that there was no room for construction of the Indiana Act. There not only is room for construction of the Massachusetts Act, but it must be construed against Petitioner. The Cole case, which Petitioner so thoroughly relies on, is therefore not in point.

## III

**California Has a Greater Interest than Massachusetts and its Public Policy Requires that California Take Jurisdiction**

The latest case by the United States Supreme Court is, of course, that of *Alaska Packers Assn. vs. Indus. Acc. Com. of California*, decided March 11, 1935, reported in 79 L. Ed. 1044. The facts of such case are too well known to the California courts to require a recitation of them. We are concerned here only with the language of the United States Supreme Court having a bearing upon this case. We particularly call the attention of the Court to the following language:

"In the case of statutes, the extra-state effect of which Congress has not prescribed, where the policy of one state statute comes into conflict with that of another, the necessity [fol. 261] of some accommodation of the conflicting interests of the two states is still more apparent. A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. See *Olmsted vs. Olmsted*, 216 U. S. 386, 54 L. Ed. 530, 30 S. Ct. 292, 25 L. R. A. (N. S.) 1192; *Aetna L. Ins. Co. v. Dunken*, *supra* (266 U. S. 393, 69 L. Ed. 346, 45 S. Ct. 129).

"The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both *the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate [fol. 262] its own statutes to those of the other, but by ap-*

*praising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.*

*"The enactment of the present statute of California was within state power and infringes no constitutional provision. *Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. It follows that not every statute of another state will override a conflicting statute of the forum by virtue of the full faith and credit clause; that the statute of a state may sometimes override the conflicting statute of another, both at home and abroad; and, again, that the two conflicting statutes may each prevail over the other at home, although given no extraterritorial effect in the state of the other.**

*"This was fully recognized by this Court in Bradford Electric Light & P. Co. v. Clapper, supra (286 U. S. 157-162, 76 L. Ed. 1033-1037, 52 S. Ct. 571, 52 A. L. R. 696). There, upon an appraisal of the governmental interests of the two states, Vermont and New Hampshire, it was held [fol. 263] that the Compensation Act of Vermont, where the status of employer and employee was established, should prevail over the conflicting statute of New Hampshire, where the injury occurred and the suit was brought. In reaching that conclusion, weight was given to the following circumstances; that liability under the Vermont Act was an incident of the status of employer and employee created within Vermont, and as such continued in New Hampshire where the injury occurred; that it was a substitute for a tort action, which was permitted by the statute of New Hampshire; that the Vermont statute expressly provided that it should extend to injuries occurring without the state and was interpreted to preclude recovery by proceedings brought in any other state; and that there was no adequate basis for saying that the compulsory recognition of the Vermont statute by the courts of New Hampshire would be obnoxious to the public policy of that state.*

*"If, for the reasons given, the Vermont statute was held to override the New Hampshire statute in the courts of New Hampshire, it is hardly to be supposed that the Constitution would require it to be given any less effect in*

Vermont, even though the New Hampshire statute were set up as a defense to proceedings there. Similarly, in the present case, only if it appears that, in the conflict of interests which have found expression in the conflicting [fol. 264] statutes, the interest of Alaska is superior to that of California, is there rational basis for denying the courts of California the right to apply the laws of their own state. While in *Bradford Electric Light & P. Co. v. Clapper, supra*, it did not appear that the subordination of the New Hampshire statute to that of Vermont, by compulsion of the full faith and credit clause, would be obnoxious to the policy of New Hampshire, the Supreme Court of California has declared it to be contrary to the policy of the State to give effect to the provisions of the Alaska statute and that they conflict with its own statutes.

“There are only two differences material for present purposes, between the facts of the Clapper case and those presented in this case: the employee here is not a resident of the place in which the employment was begun, and the employment was wholly to be performed in the jurisdiction in which the injury arose. Whether those differences, with a third—that the Vermont statute was intended to preclude resort to any other remedy even without the state—are, when taken with the differences between the New Hampshire and Alaska compensation laws, sufficient ground for withholding or denying any effect to the California statute in Alaska, we need not now inquire. But it is clear that they do not lessen the interest of California in enforcing its [fol. 265] compensation act within the state, or give any added weight to the interest of Alaska in having its statute enforced in California. We need not repeat what we have already said of the peculiar concern of California in providing a remedy for those in the situation of the present employee. Its interest is sufficient to justify its legislation and is greater than that of Alaska, of which the employee was never a resident and to which he may never return. Nor should the fact that the employment was wholly to be performed in Alaska, although temporary in character, lead to any different result. It neither diminishes the interest of California in giving a remedy to the employee, who is a member of a class in the protection of which the state has an especial interest, nor does it enlarge the interest of

Alaska whose temporary relationship with the employee has been severed.

"The interest of Alaska is not shown to be superior to that of California. No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statutes of Alaska be given that effect." ( Italics ours.)

Alaska Packers Assn. vs. Ind. Acc. Com. of Calif.,  
79 L. Ed. 554, 561-562.

[fol. 266] Referring to the above language, it is apparent that California has a greater interest in the instant case than has Massachusetts. The employee suffered his injury here in a California industry. He received his medical treatment here and his hospitalization. Were he not properly and promptly compensated, this man, more than likely, would become a charge on the state.

It should also be noted that not only are the interests of the employee here involved, but that there are surgical fees to three physicians totalling over \$200; that there is a hospital bill of over \$100 and that nurses' fees have been incurred in excess of \$100. The doctors, the hospital and the nurses are "parties" before the California Commission (Independence Ind. Co. vs. Ind. Acc. Com., 2 Cal. (2d) 411). It thus appears that not only was the injury suffered here, but that all of the interested parties were located in California and that most of them are permanent residents here.

Commenting upon the attitude of the Industrial Accident Commission, Petitioner states in its authorities attached to its petition for hearing, at page 35, lines 15 to 23, as follows:

"The respondent Commission overlooked the reason and purpose behind the decisions in these cases. After all, it is the theory of the workmen's compensation laws that industry must bear the cost of industrial injuries, and it follows that the particular industry which is responsible, is [fol. 267] that of the State which has the greatest interest in the employment relationship. Insurance companies are nothing more than service organizations in the collection of funds to meet the responsibility of employer in a particular area."

May we point out to the Court that this employer is a large corporation with many branches, each operating practically as a separate business. The employer realized that its business in California was practically a separate entity. To protect itself and its employees, it secured coverage with Petitioner against liability under the California Act. It paid its premiums and its policy was in full force and effect. The salary of Tator while he was located at the California plant was charged to its operating expense. Despite the contentions of the Petitioner that Tator was not employed by the Pacific Coast branch of the company, that in truth and in effect was the situation, though of course he was technically employed by the corporation of which the Pacific Coast branch was merely a part.

### Conclusion

We believe that the petition for hearing in this matter is entirely without merit for the following reasons:

1. The Massachusetts Act does not restrict the employee from prosecuting a claim for compensation in California, but only restricts him from prosecuting a claim for damages. This case now before the Court arises merely by [fol. 268] reason of his prosecution of a claim for compensation and therefore, even if the Massachusetts Act were given full force and effect, it would not restrict such claim as by such claim the employee does not seek to collect damages.
2. Since the Massachusetts Act is not an exclusive act, and since in any event it would not be mandatory upon California to give it force and effect under the full faith and credit clause, the only question involved is as to whether California has an interest equal to or greater than that of Massachusetts. This of course involves the question of the public policy of this state. The factory at which the employee was working is located here and is a California industry. All of its operations are strictly local in so far as the production department, in which the employee was working, is concerned. The factory is subject to all labor regulations, safety laws, fire laws, etc., of this state. The employee being injured, if not taken care of, would likewise become a charge on this state. The doctors, hospital and nurses are residents of the state and are entitled to protection under its laws. The Petitioner here insured

the California operations of the employer and agreed with the employer to assume liability in return for the payment of the specified premium. There is no reason why Petitioner should be allowed to escape the liability which it was contemplated it should assume.

[fol. 269] Wherefore, it is respectfully prayed that petition for hearing be denied.

Dated November 17, 1936.

Respectfully submitted, Keith & Creede, Attorneys for Respondent Kenneth Tator.

[fol. 270] *Duly sworn to by Edmond W. Leonard. Jurat omitted in printing.*

[fol. 271] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

JOINT ANSWER TO PETITION FOR REHEARING—Filed February 25, 1938

Respondents above named and physicians who rendered medical service to Respondent Tator respectfully present herewith their Answer to the Petition for Rehearing submitted by Petitioner, Pacific Employers Insurance Company in which Petitioner seeks a rehearing from the decision rendered in this matter by the Honorable Supreme Court of the State of California January 31, 1938.

The Petition for Rehearing submitted on behalf of said insurance company merely reiterates the contentions most insistently made by such company before the Court in its lengthy briefs and in the oral arguments of its counsel. The Court heretofore thoroughly considered all of the facts in the record in the light of the controlling cases and decided that the interests and public policy of the State of [fol. 272] California justified the exercise of jurisdiction by the California Industrial Accident Commission.

Petitioner Pacific Employers Insurance Company, which has been held liable for the compensation benefits due as a consequence of Mr. Tator's injury in California, under its policy agreement made prior thereto with his employer,

seeks to disparage and refute the reasoning and conclusions of the Court. It has not, however, met the test set forth by the United States Supreme Court in the Alaska Packers case:

"**Prima facie** every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum."

Alaska Packers Assn. vs. Ind. Acc. Com., (California) 294 U. S. 532, 547-548

Petitioner Pacific Employers Insurance Company, upon whom the burden of proof clearly rested, has totally failed to show on any rational basis that of the conflicting interests involved those of Massachusetts are superior to those of California.

[fol. 273] Wherefore, it is respectfully prayed that the Petition for Rehearing be denied.

Respectfully submitted, Everett A. Corten, Attorney for Respondent Industrial Accident Commission. Keith & Creede, Attorneys for Respondent Kenneth Tator. Hartley Peart, Howard Hassard, Attorneys for Physicians Who Rendered Medical Services to Respondent Tator: Dr. N. Austin Cary, Dr. J. Scott Quigley, Dr. Ergo A. Majors.

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[fol. 274] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA

[Title omitted]

REPORT OF HEARING—Filed December 4, 1935

Be it Remembered that pursuant to orders duly made and entered this matter came on regularly for hearing before the Industrial Accident Commission of the State of California, at its offices, State Building, Civic Center, San Francisco, California, on November 27, 1935, at 2 p. m.

Present: Raymond G. Lindley, Referee. Florence H. Jones, Reporter.

Applicant present in person.

Attorneys for applicant: Keith and Creede, Mr. Frank Creede appearing.

For Pacific Employers: W. N. Mullen.

For Hartford: L. H. Grunewald.

The following witnesses were duly sworn, and their testimony taken, which is not transcribed at this time:

[fol. 275] K. Tator.

Arthur D. Angell.

Case Open 15 days for the filing of insurance policy of Hartford covering the defendant employer, it is alleged, under the Massachusetts law, and policy of Pacific Employers covering the operations of the employer in California, and for medical reports and medical bills, and 5 days thereafter for Points and Authorities by defendants and 5 days thereafter for answer by applicant, and 5 days thereafter for reply by defendants; submitted 30 days from this date unless further proceedings are requested or initiated by this Commission.

It appearing from the statement of Mr. L. H. Grunewald, representing the Hartford Accident & Indemnity Company that the said company insures the defendant, Dewey & Almy Chemical Company for liability under the Workmen's Compensation Act of the State of Massachusetts, it is hereby ordered that Hartford Accident & Indemnity Company be joined as party defendant.

Good cause appearing therefor, the name of the applicant is amended to read: Kenneth Tator.

No stipulations taken.

#### Issues:

All the material allegations of the application, and, in addition thereto, jurisdiction of the Industrial Accident Commission of the State of California.

[fol. 276]

KENNETH TATOR

(Page 15, Lines 1-26)

#### Mr. Creede:

Q. And at what plant of the Dewey & Almy Chemical Company were you working in on October 17, 1935?

A. At the Oakland Factory.  
Q. And who was the Manager of the Oakland Factory?  
A. Mr. Angell.  
Q. And what are his initials?  
A. A. D.  
Q. And did you sustain an injury to your right hand on that day?  
A. Yes.  
Q. And will you state for the referee how that accident occurred?  
A. Well, there were some changes made in the agitator of a mixing tank to change the speed of the agitator. I went out there to checkup on the new speed, to count the revolutions per minute, and in doing so my hand was caught in an unguarded gear on the drive.  
Q. About what time of day did that happen?  
A. About a quarter to five, I believe, possibly.  
Q. And your usual working hours at the Oakland Plant were what?  
A. Eight-thirty to five.  
Q. And as a result of that injury can you describe what happened to your hand?  
A. Amputation of four fingers of the right hand.

[fol. 276a] (Page 16, Lines 1-8)

Kenneth Tator

Referee:

Q. Which one?  
A. The thumb remains.  
Q. Only the thumb remaining?  
A. And part of the hand itself.

Mr. Creede:

Q. Was Mr. Angell immediately notified of the occurrence of the accident?  
A. Mr. Angell was a witness to the accident.

(Page 16, Lines 24-26)

Q. Are you still under Dr. Major's treatment?  
A. I go in for observation and he looks at it.  
Q. He has not discharged you as yet?

[fol. 277]

(Page 17, Lines 1-9)

Kenneth Tator

Mr. Creede:

A. No.

Q. And did you return to work?

A. Yes.

Q. When did you return?

A. November 4th or 5th.

Q. Your application states you returned November 4th, that is your best recollection of your date you returned to work?

A. Yes.

(Page 19, Lines 21-26)

Q. Now, take for instance the work you are doing in the Oakland Factory, to what extent was physical force necessary to operate the various machines you operated while there?

A. Well, all of these machines of course have clutches on them. We use clutches and in one machine particular you have to throw yourself against the clutch to put the thing in. There

[fol. 278]

(Page 20, Lines 1-26)

Kenneth Tator

is also such things as metal handling.

Q. You mean handling metals, lifting it up and putting it in the machines?

A. Yes, and there is the sampling of the various stages of manufacturing, and pretty nearly all of the incidental laboratory work and control. Making of the viscometers during the process of the manufacture.

Q. Then in testing those machines is it necessary for you to lift material in and out of the machines and operate them yourself at the factory.

A. It is very desirable.

Q. Well, do you do it?

A. Yes, I have done it.

Q. Now, how long prior to October 17, had you been working at the Oakland Plant of the Dewey & Almy Chemical Company?

A. The date slipped my mind, but it is about nine days after Labor Day of this year.

Q. It was approximately September 17, then?

A. Yes.

Q. Yes, and where is your home, Mr. Tator?

A. Portland, Oregon.

Q. And you were raised in Portland, Oregon?

A. Yes, my folks are there.

Q. You are not married?

A. No.

[fol. 279]

(Page 25, Lines 1-26)

Kenneth Tator

Q. Did you report to Mr. Angell of your progress from time to time?

A. Reports were made both in writing and verbally of my progress, and all the stages of my work.

Q. Did you have to obtain Mr. Angell's permission for any part of your work as you went along?

A. Well, I asked Mr. Angell if he would allot me workmen for example to handle things, and particularly in the machine changes. I would have no authority to have any changes made in the machine which involved for example, buying and installing gears.

Q. Was it necessary to have any changes made while you were doing this work in the gears or any part of the machine?

A. Yes, on one occasion we bought a new set of paddles and had them installed, and on another occasion we had the gears changed.

Q. When you wanted the gears changed did you go ahead and order them yourself or was it necessary to take it up with Mr. Angell and get permission?

A. It was necessary to ask Mr. Angell about that. I could not order that myself.

Q. And you did take that up with him?

A. Yes.

Q. And was the same situation true of the paddles?

A. Yes.

Q. Now, on this particular machine you were working on at the

Kenneth Tator

Mr. Creede:

time you were hurt, will you state for the record with whom you were working and how you came to be working on that machine at that particular time. Was it under anyone's suggestion or instruction?

A. Well, this machine had had this change made, the gears had been changed to change the speed of the machine. This work was done on the afternoon of the day the accident occurred. Mr. Angell and I were talking and the question came up as to whether that work was finished or not, and Mr. Angell told me it was, and it was his suggestion I believe, that we go out and see what the new speed was.

Q. Now, you had done the preliminary work in making the change, did you do it yourself or some of the other men who were in the Oakland plant?

A. The Oakland staff did it.

Q. You arranged for them to do it, you or Mr. Angell?

A. Mr. Angell.

(Page 27, Line 26)

A. There had been changes made in the mixer in the afternoon.

Kenneth Tator

Mr. Creede:

Q. By whom?

A. The mechanic at the Oakland Factory.

Q. Under whose direction?

A. Under Mr. Angell's direction, and I knew this work was being done and while Mr. Angell and I was talking, I asked whether it was finished and he told me it had just been finished, and I believe it was his suggestion that we go out and test the new speed.

Q. And following that conversation did you go out and start to operate the mixer in order to test it?

A. We did, and that is when the accident occurred.

Q. What, exactly, were you doing at the time that caused the accident to happen, just what were you doing at the very moment of injury as nearly as you can tell?

A. Just above the gear in which my hand was caught, there is a vertical shaft, and on the shaft there is a little set screw and I intended to put my thumb against that and count the revolutions with my thumb. It was while there and I was wiping the oil off and my hand slipped into the gears.

Q. Is there any mechanical arrangements on the gears to prevent a person's hand from slipping into them?

A. Yes, ordinarily, but this guard had been taken off.

Q. In working at the Oakland Plant who set your hours, the hours during which you were to work if anyone?

A. Well, insofar as production was concerned, I conformed to the factory hours which were set by Mr. Angell. Now,

[fol. 282]

(Page 29, Lines 1-5)

Kenneth Tator

Mr. Creede:

if some particular process was continued from five o'clock when the new shift went on, if the thing was still in process, I may take it upon myself to stay over another two hours to watch its completion, but I conformed to the production schedule.

(Page 29, Lines 11-26)

Q. Now, Mr. Tator, during the time that you were working at the Oakland Plant, did you work on any machinery or any part of the place without first discussing the matter with Mr. Angell and obtaining his consent?

A. No.

Q. What?

A. No, I did not.

Q. Well, what did you do before you commenced working; I don't think your answer is clear?

A. Before I commenced working Mr. Angell and Mr. Piez and myself discussed the difficulties they were having, and I was taken out by Mr. Piez and Mr. Angell and shown where the difficulty was taking place, and I was told what changes had been made prior to my being there and my starting

work, was suggested trying out the changes that I thought might

[fol. 283]

(Page 30, Lines 1-2)

Kenneth Tator

Mr. Creede:

help the situation on that equipment which they pointed out.

(Page 31, Lines 25-26)

Q. In other words, you have been getting the same salary arrangement out there that you did back in Massachusetts

(Page 32, Lines 1-3)

immediately prior to your leaving?

A. Yes, as far as I know.

Q. As far as your checks would show?

(Page 34, Line 26)

Q. Do you mean from Mr. Angell, the Manager of the Oakland

(Page 35, Lines 1-3)

branch?

A. Yes.

Mr. Mullen:

[fol. 284]

(Page 35, Lines 7-15)

Kenneth Tator

Referee:

Q. These advances, are they taken off your salary, or are they an expense allowance?

A. Expense allowance, and I will turn in a statement on my expenses, which will lower the credit against me.

Q. But they are in addition to your salary, your salary goes on regardless of these expenses; it is just an expense allowance as I see it?

A. Yes, that is all.

(Page 35, Lines 21-26)

Q. And you were sent out here as a Chemical Engineer of the company to find this trouble and rectify it, is that correct?

A. I was sent out here presumably as the most suitable man to overcome the trouble and rectify it.

(Page 36, Lines 1-2)

Q. And when you overcame the trouble and rectified it, you were to do what, go back to Cambridge?

[fol. 285] (Page 42, Lines 16-23)

Kenneth Tator

Q. The question of what you might do or want to do if you got hurt never came up, did it?

A. I didn't think being hired was such a complicated job.

Q. Answer the question. The question is, what you wanted to do in the event you were injured and that question never came up.

Referee:

(Page 42, Line 26)

Q. Did you sign any papers at the time you entered the employment?

(Page 43, Lines 1-10)

A. I signed a contract with the company, but to the best of my knowledge I don't think there was anything about that in the contract.

Q. Did you remember reading it carefully?

A. Yes, I read it carefully.

Q. Was it a long document?

A. Yes, long, but it concerned more researches than injuries.

Q. You don't think you signed anything about that?

A. No.

[fol. 286] (Page 43, Lines 19-22)

Kenneth Tator

Q. Now, how long were you confined in the Peralta Hospital?

A. I believe a two-week period, October 17th.

Q. And do you know whether or not that bill has been paid?

A. The hospital bill has not been paid.

(Page 49, Lines 12-19)

Q. Mr. Tator, you say you had requested to go back to Cambridge since the accident?

A. Yes.

Q. And who told you to go back to Cambridge?

A. Mr. Ferguson, the general manager.

Q. And where was Mr. Ferguson when he told you to go back to Cambridge?

A. In Oakland, California.

(Page 50, Lines 8-9)

Q. All right. You are still working out of the Oakland Branch?

A. Yes.

[fol. 287]

ARTHUR D. ANGELL

(Page 54, Lines 12-26)

Q. Mr. Angell, you are connected with the Dewey & Almy Chemical Company?

A. I am.

Q. And in what capacity?

A. Manager of the Oakland plant and assistant treasurer and assistant secretary of the company.

Q. And Dewey & Almy Chemical Company is a corporation?

A. Yes.

Q. It is a Massachusetts corporation?

A. Yes.

Q. And as a Massachusetts corporation, it is licensed to do business in California?

A. Yes.

Q. It is the one corporation, the same corporation doing business in California and Massachusetts?

(Page 55, Lines 1-7)

A. Yes.

Q. And, as manager of the Oakland branch of the Dewey & Almy Chemical Company, you have supervision over the employees of that plant?

A. Yes.

Q. And there is no one superior to you at the Oakland plant?

A. No.

[fol. 288]

(Page 55, Lines 15-26)

Arthur D. Angell

Mr. Creede:

Q. And before Mr. Tator commenced his work, did you have a discussion with him as to your problem here?

A. Yes.

Q. And before he commenced work did you show him where he was to work and the particular machine with which you were having difficulty?

A. We went out to the equipment together in the factory.

A. When did you show him the machinery and explain it?

A. We explained what had been done to try and correct the trouble we were having.

Q. And did you work with him and discuss the problems on which he was working from time to time while he was there?

[fol. 289]

(Page 56, Lines 1-26)

Arthur D. Angell

Mr. Creede:

A. Yes, from time to time.

Q. Now, was Mr. Tator subject to your orders while he worked at the plant?

A. Yes, he was. Of course, Mr. Tator to begin with is a chemist and I am not. And, as any men who might come out, other than the President or Vice-President, anyone in the plant is under my jurisdiction. Of course I did not like to advise him on technical matters. He was trying to help us.

Q. But as to where he could work and what men he could use and what changes he could make in the equipment, was that subject to your approval?

A. Yes.

Q. And as far as conforming to the order and production schedule laid down by you, was he working or required to conform with the same?

A. Well, I have known Mr. Tator for years and actually there has never been any case of having to tell him to do this or the other thing. As to the hours he was there and was reporting there, it would be my place to tell him if he did not show up.

Q. Did he make reports to you from time to time of the progress of his work?

A. Yes.

Q. If at any time you had not wanted to work on a certain day or a certain machine, did you have the right to tell

[fol. 290]

(Page 57, Lines 1-26)

Arthur D. Angell

Mr. Creede:

him not to work or not to do that because you wanted to use the machinery for other purposes?

A. Yes. As a matter of fact, I think we had an occasion to do that as we were very busy. The particular compound with which we were having trouble, we also used that same equipment for manufacturing different products, with slightly different characteristics, and at that time we were working generally 24 hours in order to keep up with the orders, and the trouble which we were having with the production, we had some part of the time laid off, and he would have liked to go on and complete his work, but we had to manufacture this other product in order to keep up with the orders.

Q. Do you mean Mr. Tator in working out the problem with the particular compound was using certain machinery which you used as part of your production?

A. Yes.

Q. And he would have liked to continue using that machine until his problem was solved, but you needed the machinery to work on some other compound and you told him he would have to wait while you manufactured this other compound?

A. Yes.

Q. You were present at the time of the accident?

A. Yes.

Q. And you witnessed it?

A. Yes.

[fol. 291]

(Page 58, Lines 1-26)

Arthur D. Angell

Mr. Creede:

Q. And were you testing the machine with Mr. Tator?

A. It was my suggestion that we go out there and time the revolutions per minute and the machine.

Q. And have there been some changes made in the mixer—

A. (Interrupting.) We changed—

Q. (Interrupting.) —prior to your test?

A. Yes, we had changed the drill and mixer on the line shaft and we changed the sprockets, putting in a different number of teeth, to change the existing revolutions per minute.

Q. And did you give instructions to have the change made?

A. Yes.

Q. And they were made by whom?

A. Our maintenance man.

Q. And did he report back to you when the changes were complete; did the maintenance man report back to you when the changes were made?

A. Yes, he did; I asked the maintenance man if the changes had been made.

Q. Now, Mr. Angell, Mr. Tator's expenses while here, were they charged to the Oakland branch?

A. We were billed by the Cambridge office for his expenses, and they were vouchered on our books.

Q. As a matter of bookkeeping, it was straightened out between your accountant and the accounting office at Cambridge, both for the money advanced to him and the money you advanced; whatever his expenses of the trip out here were and while

[fol. 292] (Page 59, Lines 1-10)

Arthur D. Angell

Mr. Creede:

here were charged to the Oakland branch?

A. Yes, the actual expenses were charged to the Oakland branch.

Q. Now, as to his salary, was any portion of his salary charged to the Oakland branch while working here?

A. In this instance his salary is to be charged to the Oakland plant I know.

Referee:

—. It is to be.

A. Yes, it is to be.

(Page 59, Lines 14-20)

Q. Mr. Angell, Mr. Tator was out here once before?

A. Yes, that is right.

Q. And about fourteen or fifteen months ago, approximately.

A. Yes, approximately.

Q. And when he came out that time, was his salary paid by the Cambridge office?

A. It was.

[fol. 293]

(Page 64, Lines 20-26)

Arthur D. Angell

Q. And did Mr. Ferguson advise you why he was coming out?

A. Yes.

Q. Without mentioning any names, will you tell us generally why he sent Mr. Tator, why he said he was coming out?

A. One of our main customers was having trouble with air in canned seaming compound and with the result that in operation of the machines there were scrapings on the end; I

(Page 65, Lines 1-20)

have reference to the can end, and there was a conference in New York at the time, and one of the heads of this concern with whom we do business was in New York at this conference, and one of the objects of the conference was to decide as to whether or not they would use this particular compound in 1936, and such being the case why the sooner we could rectify this problem the better, Mr. Ferguson got in touch with Mr. Tator by wire or telephone from New York to Cambridge and told him to take a plane out here, and he arrived the following day.

Q. And when you saw Mr. Tator, did he tell you why he was out here?

A. I already knew the answer. We, Mr. Tator and ourselves, were able as a result of his coming out here to find a method within 12 or 15 hours whereby we could get the air out of the compound by another operation, and immediately a wire was sent back to New York advising them that the air trouble had been eliminated, and further work was done to keep the air out of the compound without having at a later date to go through this extra procedure.

[fol. 294]

(Page 68, Lines 1-13)

Arthur D. Angell

Q. Isn't it true that for this trip when the entries are made through your books, showing that Mr. Tator's expenses of the trip and his salary while here were charged against the Oakland branch; any accountant going through your books can see these entries and the books will show that Mr. Tator's expenses and salary while here were charged against the Oakland plant?

A. That is correct.

Q. Where do you receive your salary from?

A. My salary comes from Cambridge. They have what they call "confidential payroll."

Q. Well, are any of the other employees sent from Cambridge?

A. Mr. Piez, the superintendent and the girls in the office.

(Page 68, Line 25)

I have one more question. Is Mr. Ferguson your superior

(Page 69, Lines 1-10)

officer, as well as Mr. Tator's?

A. Yes.

Q. So that in substance your superior, Mr. Ferguson, who is your boss and Mr. Tator's boss, told Mr. Tator to go out and work with Mr. Angell in solving a problem they have out here?

A. Yes. As general manager we were both interested. And we were both his inferiors.

Q. You take orders from him and also does Mr. Tator?

A. Yes.

[fol. 295]

(Page 72, Lines 19-26)

Arthur D. Angell

Q. Well if you thought Mr. Tator was not doing his work satisfactorily and you thought he should be discharged and you fired him, or would you have taken that up with someone?

A. No, I would not fire him, I would get in touch back East and probably suggest that someone else come out here.

Q. And leave the decision to the Eastern office?

A. Yes, as far as firing goes; I would fire him out of the plant but not on the payroll.

(Page 73, Lines 3-19)

Q. If you found that the work he was doing there at the plant was not what it should have been, the quality was not what it should have been, did you feel at liberty to tell him to get out of there and get off the job?

A. Yes, when he is in the Oakland plant he is an employee of mine as much as anyone else in the plant, at the Oakland plant.

Mr. Creede: Let us get this question straight. Referring to the questions that Mr. Mullen asked you concerning what your books showed, speaking of the first time Mr. Tator was here fourteen or fifteen months ago, was his salary at that time charged against you for the time he was here?

A. Not as a specific charge.

Q. His expenses were charged?

A. Yes, his expenses.

[fol. 296]

(Page 74, Lines 8-26)

Arthur D. Angell

Q. So there was no specific charge on your payroll made for his services at that time?

A. No.

Q. Why was that? Because his trip was short or why?

A. Because his trip was short; it does not amount to much on a short trip to justify the bookkeeping that is involved.

Q. But on this particular time, the time of his visit in October—and he is still working under you at the present time?

A. Yes.

Q. And he came out here in September, and I understand you to say his salary is to be charged?

A. Yes, it is to be charged to us, and his expenses have been charged.

Q. And this is a charge over and above the ordinary usual research work you have. They are charging his actual time he is out here against you?

A. Yes, because it is worthwhile this time?

Q. On account of the length of his stay?

[fol. 297]

(Page 75, Lines 1-16)

Arthur D. Angell

A. Yes.

Q. Now the question is, if the accountant of the Pacific Employers or anyone else comes in to go over the books to get your payroll—your books are open—and that transaction will show, irrespective of under what heading?

A. Yes, it will show on our books, but not on the payroll.

Q. In other words, you have one payroll, the usual payroll you keep for your regular and usual employees?

A. Yes.

Q. And then your books are open?

A. Yes.

Q. And if there is any question of the payroll that doesn't show up on your payroll record, but which may show up in some other entries, why that can be ascertained by a proper audit of your record?

A. It will appear on our books as salary.

[fol. 298]

(Page 86, Lines 3-18)

Arthur D. Angell

Q. Now in addition over and above some usual charge, because Mr. Tator came out and worked this year, there would be a specific charge made for his expenses and salary while here?

A. Yes.

Q. And that will show on your books?

A. Yes.

Q. And that he was employed at the Oakland Plant from September, nine days after Labor Day, until some time the end of November, toward the end of November—today is the 27th, isn't it, and he is still working for you?

A. Yes.

Q. And someplace in your books they will show that his salary has been charged against this plant and will be borne by this plant?

## TESTIMONY OF KENNETH TATOR

(Page 86, Lines 25-26)

Q. What state were you born in, Mr. Tator?  
 A. New York State.

[fol. 299]

(Page 87, Lines 1-10)

Kenneth Tator

Q. And when did you come to Portland, Oregon, moved there as a boy with your parents?

A. I left New York when I was 13 and I lived two years in Arkansas with my parents, and then we went to Tacoma, Washington, for two years, and then to Portland, with my parents.

Q. Were you in Portland when you arrived at 21 years of age?

A. Yes.

Q. Did you register to vote there?

A. I am quite sure I did.

(Page 87, Lines 14-26)

Q. And your only effects, such things as you brought for your immediate use, you left back in Cambridge, Massachusetts, your books and your guns and things like that?

A. Many of them are left in Portland.

Q. Where did you go to college, Mr. Tator?

A. Boston.

Q. What Boston college?

A. Massachusetts Institute of Technology.

Q. And you went there from your home in Portland?

A. Yes.

Q. And after you got out of college, you got a position with the Dewey & Almy Chemical Company?

A. Yes.

[fol. 300]

(Pages 88, Lines 1-26)

Kenneth Tator

Q. When did you graduate?

A. 1930.

Mr. Creede:

Q. And that is how you happened to come to the State of Massachusetts?

A. During the time I have lived in Massachusetts I think I have accumulated more things than I now have in Portland.

Referee:

Q. Where do you consider your home?

A. Portland.

Q. Where would you go if you were to lose your position back there?

A. Portland, Oregon.

Q. Do you own any real estate in Massachusetts or any residence?

A. No.

Q. Do you own any property in Portland?

A. I don't know.

Q. But your parents are living there and own a home?

A. Yes.

Mr. Creede:

Q. You are single, Mr. Tator?

A. I am single.

Referee:

Q. How long have you been with the Chemical Company, since 1930?

A. Yes, right after leaving school.

[fol. 301]

(Page 90, lines 17-26)

Kenneth Tator

Q. And since your injury you have not done anything with knowledge and intention to waive any right you may have under the laws of California, have you?

A. I have tried not to.

Q. And you desire and seek the benefits of the Workmen's Compensation Act of 1917 on account of an injury sustained at Oakland, California?

A. That Act is the California Act, is it?

Q. Yes.

A. Yes, I do desire to.

(Here follow 2 Exhibits, folios 302 and 306)

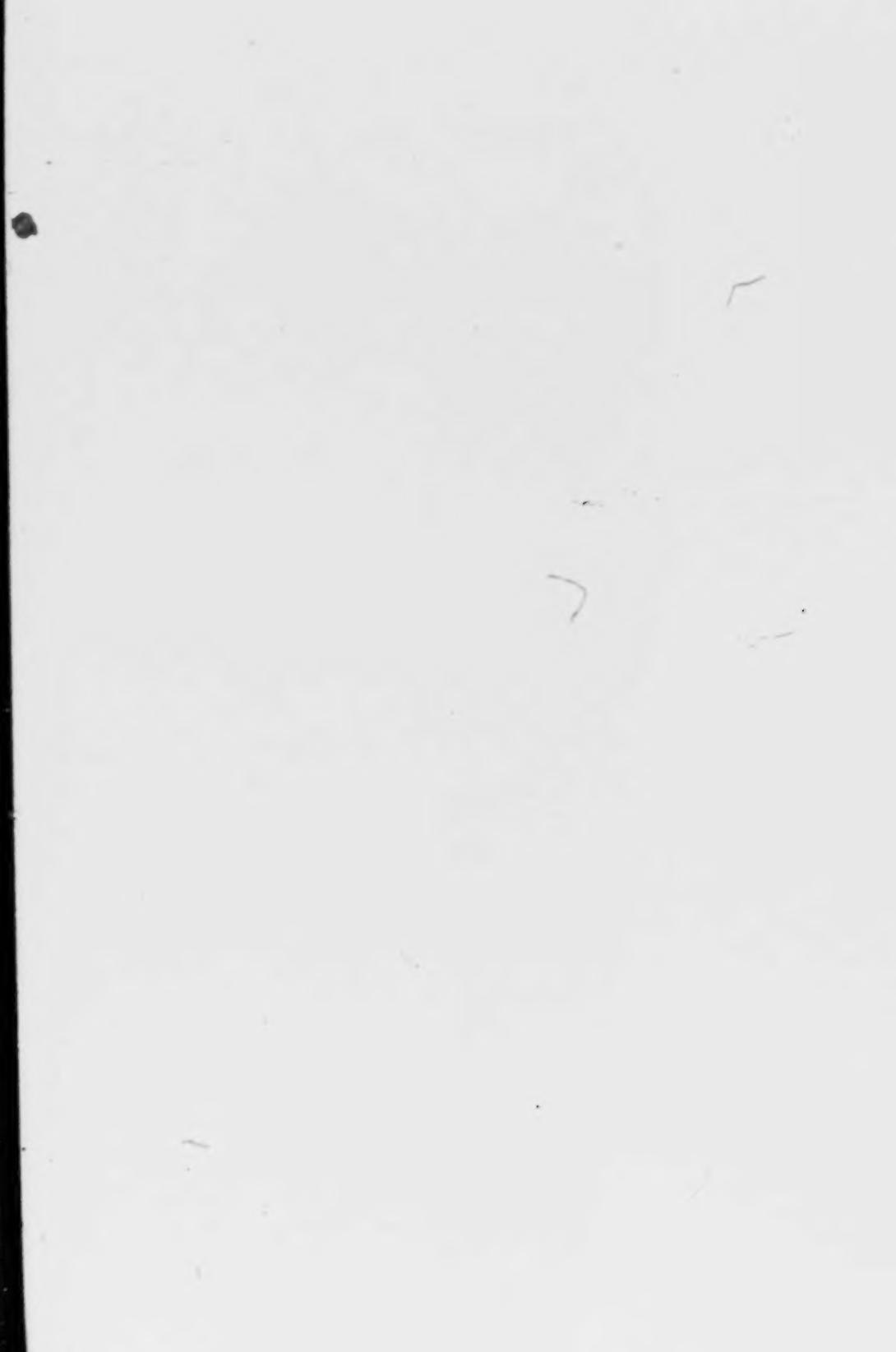


EXHIBIT IN EVIDENCE

UNIVERSAL WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY



**Pacific Employers Insurance Company**

A CALIFORNIA CORPORATION *Dept. of Industrial Relations*

LOS ANGELES

SAN FRANCISCO

(HEREIN CALLED THE COMPANY)

*Dec 23/1938  
by Frank J. French  
Pr. & P. Inc.*

In Consideration of the estimated advance premium herein provided and the Declarations set forth herein and forming a part hereof

**Does Hereby Agree**

With this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:

**I. (a) To Pay Promptly** to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they become due,

- (1) *To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and*
- (2) *For the benefit of such person the proper cost of medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or in the event of fatal injury, funeral expenses, all in accordance with the provisions of such Workmen's Compensation Law.*

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

**I. (b) To Indemnify** this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Company under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy.

**II. To Serve** this Employer (a) by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and, (b) upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

**III. To Defend**, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

**IV. To Pay** all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

**V. This agreement shall apply** to such injuries sustained by any person or persons employed by this Employer whose

III. To Defend, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

IV. To Pay all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

V. This agreement shall apply to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary, or Treasurer of this Employer if a corporation. The remuneration of any such designated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

VI. This agreement shall apply to such injuries so sustained by reason of the business operations described in said Declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

VII. This agreement shall apply only to such injuries so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

## This Agreement is Subject to the Following Conditions:

### BASIS OF PREMIUM

A. The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a Corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above defined are undertaken by this Employer, but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance

with Condition C hereof, at the rates, and in compliance with the rules of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in Condition C hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law or any part of such is now or shall hereafter be declared invalid or unconstitutional.

## CANCELLATION

B. This Policy may be cancelled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancellation shall be effective. The effective date of such cancellation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancellation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancellation in such state shall not be effective except in compliance with such law. The remuneration of employes for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancellation determined as herein provided. If such cancellation is at the Company's request, the earned premium shall be adjusted pro rata as provided in Condition A. If such cancellation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer when requesting cancellation is actually retiring from the business herein described, then the earned premium shall be computed and adjusted pro rata. Notice of cancellation shall be served upon this Employer as the law requires, but if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

## INSPECTION AND AUDIT

C. The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employes of this Employer while this Policy was in force.

and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders and decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

### **NOTICE OF ACCIDENTS AND CLAIMS**

This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

### **ACTION AGAINST COMPANY**

No action shall lie against the Company to recover upon any claim or for any loss under **Paragraph One (b)** hereof unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

### **SPECIAL STATUTES**

If the method of serving notice of cancellation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

**COMPANY'S OBLIGATIONS**

**D.** The obligations of Paragraph One (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured employee covered hereby, or, in the event of his death, to his dependents; and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this Employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

**KNOWLEDGE AND JURISDICTION OF EMPLOYER**

**E.** As between the employee and the Company, notice to or knowledge of this Employer of an injury or death covered hereby shall be notice or knowledge as the case may be of the Company; the jurisdiction of this Employer for the purposes of any Workmen's Compensation Law covered hereby shall be jurisdiction of the Company

**L.** No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

**CO-INSURANCE**

**J.** If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

**SUBROGATION**

**K.** The Company shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer or in any employee or his dependents claiming hereunder against persons, corporations, associations or estates.

**ALTERATIONS AND CHANGES IN POLICY**

**L.** No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the duly authorized officers of the Company, nor shall notice to any representative, nor shall knowledge possessed by any representative, or by any other person, be held to effect a waiver or change in any part of this contract. The personal pronoun herein used to refer to this Employer, or to an injured employee or dependents, shall apply regardless of number or gender.

**DECLARATIONS**

**M.** The statements in Items 1 to 6 inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This Policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

302 a

**CALIFORNIA STATE ENDORSEMENT**

The obligations of **PARAGRAPH ONE (a) OF THE POLICY** to which this endorsement is attached, include such Workmen's Compensation Laws as are herein cited and described, and none other;

CHAPTER 586, LAWS OF 1917, STATE OF CALIFORNIA, THE AUTHORIZED TITLE OF WHICH IS THE "WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT OF 1917" (EXCEPT THE INCREASE IN ANY AWARD UNDER THE PROVISIONS OF SECTION 6 (b) THEREOF, INSURANCE OF SUCH INCREASE BEING PROHIBITED BY SECTION 31 (b) THEREOF), AND ALL LAWS AMENDATORY THEREOF OR SUPPLEMENTARY THERE- TO WHICH MAY BE OR BECOME EFFECTIVE WHILE THIS POLICY IS IN FORCE. ALL THE FOREGOING, SUBJECT TO SUCH EXCEPTIONS, IS, FOR THE PURPOSES OF THIS IN- SURANCE, CALLED THE WORKMEN'S COMPENSATION LAW.

## PREMIUM AGREEMENTS

This Policy is amended as follows:

Paragraph Five (page 1), paragraph A of CONDITIONS (page 1), and Item 4 of DECLARATIONS (page 3), are amended in the following particulars:

**EXECUTIVE  
OFFICERS** 1. Unless the President, any Vice-President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer, of the employer, if a corporation, are specifically excluded from coverage under this Policy, the entire remuneration earned by each of said designated officers, during the Policy period, shall be subject to premium charge hereunder at the rate applicable to the highest rated hazard to which said designated officer is exposed.

**CO-PARTNERS** 2. If any member of a firm, association or co-partnership, is insured hereunder, the entire remuneration earned by such member during the Policy period (including the annual amount of wages, salary, emoluments or profits of each—but not less than \$2700 per annum for each), shall be subject to premium charge hereunder at the rate applicable to the highest rated hazard to which such member is exposed.

**RELATIVES** 3. If the employer is an individual, and if any relative, i. e., husband, wife, son, daughter, adopted son, adopted daughter, stepson, stepdaughter, grandson, granddaughter, son-in-law, daughter-in-law, father, mother, stepfather, stepmother, mother-in-law, father-in-law, grandfather, grandmother, brother, sister, stepbrother, stepsister, brother-in-law, sister-in-law, uncle, aunt, nephew, or niece, of the employer, or of his wife, living on the premises occupied by the employer and/or in the household of the employer, is insured hereunder, the entire remuneration (but not less than \$1500 per annum for each relative) earned by such relative during the Policy period, shall be subject to premium charge hereunder at the rate applicable to the highest rated hazard to which such relative is exposed.

BOARD AND LODGING 4. If this employer furnishes board or lodging to any employee, the value thereof shall be included in the remuneration on which the premium is based at not less than the following amounts: (1) for board only, \$30 per month; (2) for lodging only, \$6 per month; (3) for both board and lodging, \$36 per month.

**RATE CHANGES** 5. This Policy is issued by the Company and is accepted by this employer with the agreement that the Company agrees to allow any reduction in the rates of premium which may be promulgated by the California Inspection Rating Bureau under the Industrial Compensation Rating System, or any successor system, in the State of California.

ing Schedule and/or the California Experience Rating Plan, and approved by the Insurance Commissioner of California; the employer agrees to accept any increase in such rates which may be so promulgated and approved. The effective date of any such reduction or increase shall be the effective date thereof fixed by the Insurance Commissioner.

It is further understood and agreed that (subject to the approval of the Insurance Commissioner), the rates of premium are subject to change, if, during the term of this Policy, any amendments affecting the benefits provided by the Workmen's Compensation Laws become effective; such change, if any, to be expressed by an endorsement naming the effective date thereof.

**POLICY NOT ASSIGNABLE** Paragraph I of CONDITIONS (page 2), is amended to read as follows: The interest of the employer in this Policy cannot be assigned to any other person or organization.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of this Policy other than as above stated.

fornia; the employer agrees to accept any increase in such rates which may be so provided; the effective date of any such reduction or increase shall be the effective date thereof fixed by the Insurance Commissioner.

It is further understood and agreed that (subject to the approval of the Insurance Commissioner), the rates of premium are subject to change, if, during the term of this Policy, any amendments affecting the benefits provided by the Workmen's Compensation Laws become effective; such change, if any, to be expressed by an endorsement naming the effective date thereof.

**POLICY NOT ASSIGNSABLE** Paragraph I of CONDITIONS (page 2), is amended to read as follows: The interest of the employer in this Policy cannot be assigned to any other person or organization.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements or limitations of this Policy other than as above stated.

This endorsement when countersigned by a duly authorized representative of the Company and attached to Policy No. C-45663 issued by the **PACIFIC EMPLOYERS INSURANCE COMPANY** to

DEWEY & ALMY CHEMICAL COMPANY shall

be valid and form a part of said Policy.

*Alwood Head*  
Secretary.

*Walter Montgomery*  
President

Countersigned at San Francisco, Calif this 30th day of OCTOBER, 1934

Authorized Representative.

FORM 121 6-28-34

## ENDORSEMENT

It is hereby understood and agreed, notwithstanding anything to the contrary, that the ASSISTANT TREASURER, is included under the coverage of the policy at actual remuneration per annum.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions or limitations of the policy to which this endorsement is attached other than as above stated.

This endorsement when countersigned by a duly authorized representative of the Company and attached to Policy No. C-45683 issued by the PACIFIC EMPLOYERS INSURANCE COMPANY to DEWEY & ALMY CHEMICAL COMPANY shall

be valid and form part of said policy.

*AdWoodhead*

Secretary.

*Victor Montgomery*

President.

Countersigned at San Francisco, Calif. 30th day of OCTOBER 19 34

**ENDORSEMENT AGREEMENT**  
**LIMITING AND RESTRICTING THIS INSURANCE**

The insurance hereunder is limited as follows:

It is AGREED that, anything in this policy to the contrary notwithstanding, this policy DOES NOT INSURE:

**Executive  
Officers  
Not Insured**

As respects injuries (or death resulting therefrom) sustained by any person having the title of  
**PRESIDENT, VICE PRESIDENT, SECRETARY AND TREASURER**

or any combination of such titles, with or without other titles, irrespective of the work performed by such person.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements, or limitations of this Policy other than as above stated.

This endorsement when countersigned by a duly authorized representative of the Company and attached to  
Policy No. C-45683 issued by the PACIFIC EMPLOYERS INSURANCE COMPANY to.....  
**DEWEY & ALMY CHEMICAL COMPANY** shall  
be valid and form a part of said Policy.

Adwoolead  
Secretary.

*Under Montgomery*  
President

Countersigned at San Francisco, Calif. this 30th day of OCTOBER 1934

**Authorized Representative.**

Failure to secure the payment of compensation to ALL EMPLOYEES is a misdemeanor (See Section 29c Workmen's Compensation Insurance and Safety Act).

## PREMIUM ADJUSTMENT ENDORSEMENT

In consideration of the reduced advance premium at which this policy is written, it is hereby understood and agreed that this Employer shall furnish to the Company at the end of the first period of SIX months and at the end of each subsequent period of the same duration, a written declaration of the remuneration earned by all employees during the period, divided in accordance with the classifications mentioned in the said policy and shall pay to the Company the earned premium at the rates stipulated in said policy, the advance premium not to be deducted but to be applied against the earned premium for the final period.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions or limitations of the policy to which this endorsement is attached other than as above stated.

This endorsement when countersigned by a duly authorized representative of the Company and attached to Policy No. C-45663 issued by the PACIFIC EMPLOYERS INSURANCE COMPANY to DEWEY & ALMY CHEMICAL COMPANY shall be valid and form part of said policy.

*AdWoodhead*  
Secretary

*Victor Montgomery*  
President

Countersigned at San Francisco, Calif this 30th day of OCTOBER 1934

## PARTICIPATION ENDORSEMENT

This Employer is entitled to participate in the excess of premiums paid to the Company on all policies to which this endorsement is attached over the amounts necessary to pay expenses, re-insurance and all of the compensation and other policy obligations, including the reserves required by law to be maintained, incurred under all such policies, in accordance with the rules and regulations adopted by the Board of Directors of the Company governing such participation, and in conformity with the laws of the State of California.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions or limitations of the policy to which this endorsement is attached other than as above stated.

This endorsement when countersigned by a duly authorized representative of the Company and attached to Policy No. C-45663 issued by the PACIFIC EMPLOYERS INSURANCE COMPANY to DENNY & ALMY CHEMICAL COMPANY shall be valid and form part of said policy.

*Alwood Head*  
Secretary

*Victor Montgomery*  
President

Countersigned at San Francisco, Calif. this 30th day of OCTOBER 1934

## PLICAGE POLICY C-45663

## Declarations

Item 1	<p>Name of this Employer <u>DENKEY &amp; ALMY CHEMICAL COMPANY</u></p> <p>P. O. Address <u>4000 East 8th Street, Oakland, California</u></p> <p>For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.</p> <p>Individual, Co-partnership, Corporation or Estate? <u>CORPORATION</u></p>		
Item 2	<p>The period during which the Policy shall remain in force, unless cancelled as in the Policy provided, (herein called the Policy Period), shall be from <u>DECEMBER 15TH 34</u>, to <u>DECEMBER 15TH 35</u>, at twelve and one minute o'clock A.M. standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.</p>		
Item 3	<p>Location of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number <u>4000 East 8th Street, Oakland and elsewhere in the State of California</u></p> <p>All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following Divisions as are undertaken by this Employer. 1. All industrial operations upon the premises. 2. All office forces. 3. Specially rated operations on the premises. 4. Operations not on the premises.</p>		
CLASSIFICATION OF OPERATIONS	Estimated Total Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Premium
1 (a) <u>#4596-MUCILAGE MANUFACTURING-</u> Manual Rate \$1.67	Semi- Annual Audit Basis	Adjusted Rates \$1.60	Deposit \$100.00
<u>#4809-CHEMICAL MANUFACTURING-</u> Manual Rate \$5.52		\$5.54	
<u>#4410-RUBBER GOODS MANUFACTURING (N.O.C.)-</u> Manual Rate \$3.07		\$2.92	
<u>50018-STORE RISKS-wholesale, or combined</u> <u>wholesale and retail (N.O.C.).....</u>	Manual	\$1.44	

3 (a) Clerical Office Employees	8810	If any	.06
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742	If any	.80
3 (b) Drivers and Drivers' Helpers (if not included in 1) wherever engaged	7805	If any	3.19
3 (c) Chauffeurs and Chauffeurs' Helpers (if not included in 1) wherever engaged	7806	If any	1.84
Minimum Premium for this Policy shall be \$.....		98.00	Estimated Advance Premium \$100.00

Item 4	The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employee of this Employer while the Policy was in force.
Item 5	This Employer is conducting no other business operations at this or any other location not herein disclosed— <b>THERE MAY BE OPERATION OUTSIDE STATE OF CALIFORNIA NOT COVERED HEREBY.</b> except as herein stated:
Item 6	No similar insurance has been cancelled by any insurance carrier during the past year— <i>except as herein stated:</i> <b>NO EXCEPTIONS</b>

In Witness Whereof, the Pacific Employers Insurance Company has caused this policy to be signed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized Representative of the Company.

*AdWoodhead*

Secretary.

Countersigned at San Francisco, Calif this 30th day of OCTOBER 1934

*Victor Montgomery*

President.

Authorized Representative.



It is agreed that all payroll expended from June 30 to July 11, shall be adjusted at the following rates:

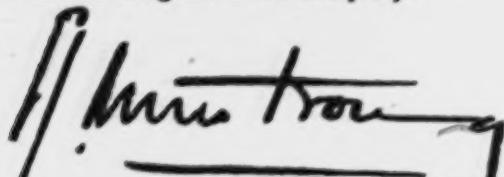
Code #1852	\$8.432
4883	1.915
4410	3.284
3632	2.308
8810	.101
8742	.330

Do not write below this line.

This endorsement to take effect on the 30th day of June 1935, at 12:01 A.M.  
(Time of day)

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements, or warranties of the undermentioned policy, other than as above stated.

Attached to and forming part of Policy No. US-587494 issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY, of Hartford, Conn., in favor of Dewey and Almy Chemical Company of Cambridge, Massachusetts, but the same shall not be binding until countersigned by the duly authorized agent of the company.



Assistant Secretary

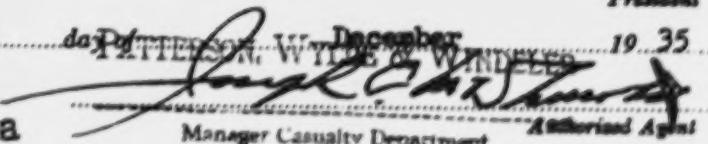
Countersigned at Boston, Mass. the 6th day of December 1935.



President

Form L-422b  
Printed in U. S. A.

306 a



PATTERSON, W. D. & WINDLE, 1935  
Manager Casualty Department  
Authorized Agent

SIX MONTHS'

Premium Payment Endorsement—Massachusetts

Upon delivery of the policy to which this endorsement is attached the assured shall pay the company an advance premium of \$ 14,813.13

At the expiration of each period of six month(s) from date of said policy, the assured shall promptly furnish the company with a statement of the exact amount of the wages and other allowances earned by employees during the period, and will pay the company, within fifteen days after the expiration of each period, a premium which shall be computed upon the basis of the remuneration for the said period and the rates from time to time established for the risk of the assured by the Massachusetts Rating and Inspection Bureau in accordance with the company's Manual rates approved by the Commissioner of Insurance of Massachusetts as adjusted by the application of the Schedule and/or Experience Rating Plans adopted by the Massachusetts Rating and Inspection Bureau and approved by the Commissioner of Insurance, if either or both such plans by their rules are applicable to the risk.

Failure of the assured to pay the six months' premiums as above determined within ten days after the receipt of a bill therefor shall entitle the company to cancel the policy at the customary short rates.

The advance premium shall be applied toward the settlement of the premium for the final period of six months.

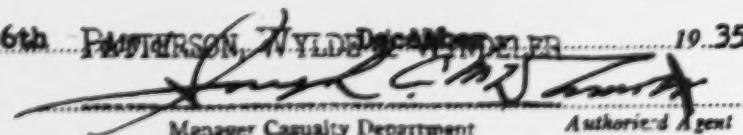
Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements, or warranties of the undermentioned policy, other than as above stated.

*Attached to and forming part of Policy No. 118-587494* issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY, of Hartford, Conn., in favor of Doway and Almy Chemical Company of Cambridge, Massachusetts, but the same shall not be binding until countersigned by the duly authorized agent of the company.

  
Secretary

  
President

Countersigned at Boston, Mass. the 6th PATRICK WYLDE 1935.

  
Manager Casualty Department  
Authorized Agent

Form L-800 Rev.  
Printed in U.S.A.

**COMPENSATION****MASSACHUSETTS ENDORSEMENT**

The obligations of Paragraph One (a) of the policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other:

Chapter 152, General Laws of the Commonwealth of Massachusetts, and all laws amendatory thereof or supplementary thereto which may be or become effective while this policy is in force.

The Company agrees to insure and secure to this employer the rights, privileges, and immunities of an insured or insured person under the provisions of the above-defined law.

This employer, upon the acceptance of this policy, agrees that the remuneration of all employees of any independent contractor or subcontractor, who undertakes for this employer any part of the business operations covered by this policy under the conditions set forth in Section 18 of such Workmen's Compensation Law, shall be included in the return of remuneration upon which premium is computed, and such remuneration so reported shall in all respects be governed by the same terms, conditions, and requirements of the policy as the remuneration of the direct employees of this employer. The requirements of this paragraph shall not apply to any contract of an independent or subcontractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by this employer, nor to any work undertaken or performed by any such contractor elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work, or on, in, or about other premises under the control and management of this employer.

If this employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary or Treasurer shall be disclosed and made subject to a premium charge at the rate applicable to the hazard to which each such officer is exposed, which rate shall be applied to the actual remuneration of each such officer but not in excess of \$100 per week. If any such officer is exposed to varying hazards, premium shall be charged on the basis of the highest rate for any hazard to which he is exposed.

If the premium on operations conducted in Massachusetts as estimated or determined in accordance with the provisions of the policy, excluding the Expense Constant, is less than \$200, there shall be added thereto the approved Loss Constant, as expressed in the Declarations, unless such addition shall increase the premium to an amount in excess of \$200, in which event only such part of the Loss Constant shall be added as will bring the amount of the premium up to \$200. Inclusion of the Loss Constant or any part thereof in the estimated advance premium is subject to final adjustment upon audit, all in accordance with the provisions hereof. In the event that the policy is written for a period of less than one year, or in the event that the policy is canceled by the employer upon completion of the business operations covered by the policy, application of the Loss Constant shall be determined upon the basis of the premium estimated or earned for the short term, extended to a policy period of one year. The Minimum Premium of the policy includes the Loss Constant.

To the premium as so determined there shall be added the sum of \$5 as an Expense Constant. The Expense Constant is not subject to pro rata or short rate adjustment except when the company cancels the policy or the policy is canceled by the employer upon retiring from the business operations covered by the policy in either of which events the amount of the Expense Constant is to be determined pro rata. The Minimum Premium of the policy includes the Expense Constant.

This policy is issued by the company and accepted by this employer with the agreement that rates of premium are subject to modification to the extent that such modification is approved and required by the Commissioner of Insurance in accordance with the law by reason of (1) any change in the benefit provisions of the above-defined Compensation Law which becomes effective during the policy period, or (2) any revision in manual rates which becomes effective and applicable during the policy period, or (3) the promulgation of adjusted rates by the Massachusetts Rating and Inspection Bureau in accordance with the rating plans approved by the Commissioner of Insurance. Such modification shall become applicable from and after the date required by said Commissioner. The provisions of this paragraph apply to rates expressed in the policy or any endorsement attached thereto. Such modifications, if any, are to be expressed by further endorsement naming the effective date thereof.

Attached to and forming part of Policy No. U. S. -587494 issued by the HARTFORD ACCIDENT AND  
INDEMNITY COMPANY, of Hartford, Conn., in favor of Dewey and Almy Chemical Company  
of Cambridge, Mass., but the same shall not be binding until countersigned by the duly  
authorized agent of the company.

J. M. Tracy  
Assistant Secretary

Jas. R. D. Kearney  
President

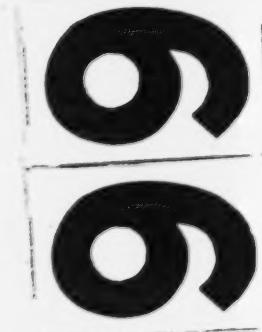
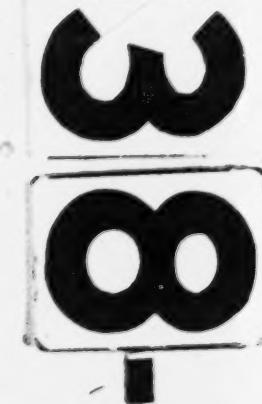
# MICROCARD 22

TRADE MARK 



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insured person under the provisions of the above-defined law.

This employer, upon the acceptance of this policy, agrees that the remuneration of all employees of any independent contractor or subcontractor, who undertakes for this employer any part of the business operations covered by this policy under the conditions set forth in Section 18 of such Workmen's Compensation Law, shall be included in the return of remuneration upon which premium is computed, and such remuneration so reported shall in all respects be governed by the same terms, conditions, and requirements of the policy as the remuneration of the direct employees of this employer. The requirements of this paragraph shall not apply to any contract of an independent or subcontractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by this employer, nor to any work undertaken or performed by any such contractor elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work, or on, in, or about other premises under the control and management of this employer.

If this employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary or Treasurer shall be disclosed and made subject to a premium charge at the rate applicable to the hazard to which each such officer is exposed, which rate shall be applied to the actual remuneration of each such officer but not in excess of \$100 per week. If any such officer is exposed to varying hazards, premium shall be charged on the basis of the highest rate for any hazard to which he is exposed.

If the premium on operations conducted in Massachusetts as estimated or determined in accordance with the provisions of the policy, excluding the Expense Constant, is less than \$200, there shall be added thereto the approved Loss Constant, as expressed in the Declarations, unless such addition shall increase the premium to an amount in excess of \$200, in which event only such part of the Loss Constant shall be added as will bring the amount of the premium up to \$200. Inclusion of the Loss Constant or any part thereof in the estimated advance premium is subject to final adjustment upon audit, all in accordance with the provisions hereof. In the event that the policy is written for a period of less than one year, or in the event that the policy is canceled by the employer upon completion of the business operations covered by the policy, application of the Loss Constant shall be determined upon the basis of the premium estimated or earned for the short term, extended to a policy period of one year. The Minimum Premium of the policy includes the Loss Constant.

To the premium as so determined there shall be added the sum of \$5 as an Expense Constant. The Expense Constant is not subject to pro rata or short rate adjustment except when the company cancels the policy or the policy is canceled by the employer upon retiring from the business operations covered by the policy in either of which events the amount of the Expense Constant is to be determined pro rata. The Minimum Premium of the policy includes the Expense Constant.

This policy is issued by the company and accepted by this employer with the agreement that rates of premium are subject to modification to the extent that such modification is approved and required by the Commissioner of Insurance in accordance with the law by reason of (1) any change in the benefit provisions of the above-defined Compensation Law which becomes effective during the policy period, or (2) any revision in manual rates which becomes effective and applicable during the policy period, or (3) the promulgation of adjusted rates by the Massachusetts Rating and Inspection Bureau in accordance with the rating plans approved by the Commissioner of Insurance. Such modification shall become applicable from and after the date required by said Commissioner. The provisions of this paragraph apply to rates expressed in the policy or any endorsement attached thereto. Such modifications, if any, are to be expressed by further endorsement naming the effective date thereof.

Attached to and forming part of Policy No. U. S. -587494 issued by the HARTFORD ACCIDENT AND INDEMNITY COMPANY, of Hartford, Conn., in favor of Dewey and Almy Chemical Company of Cambridge, Mass., but the same shall not be binding until countersigned by the duly authorized agent of the company.

J. M. Tracy  
Assistant Secretary

Countersigned at Boston, Mass.

the 6th PATTERSON, WYLD & WISLER 1935

Frank C. D. Denney  
Manager, Authorizing Agent and resident in Massachusetts.

## EXHIBIT IN EVIDENCE DECLARATIONS

*✓ Exhibit in evidence*

**NOTICE:** The "home state" of this employer is Massachusetts to be the state in which his operations are principally conducted as herein described. This policy within its terms and provisions covers the obligations of this employer (a) for compensation under the Workmen's Compensation Law of the home state for injuries wherever sustained, if such law is extra-territorial or otherwise applicable; or, (b) for damages because of the liability imposed upon him by law for such injury, to any employee wherever injured. The obligations of this employer for compensation under the Workmen's Compensation Law of any other state are to be covered, a state rate sheet showing rates in each of such other states must be attached to the application and a copy thereof attached to the declarations forming a part of the policy. The estimates expressed in Item 3 must include remuneration in all states, the rates to be the rates of the home state and the estimated advance premium computed thereon. Upon final adjustment of the premium as provided in the policy the rates for such other states will be applied to the actual remuneration expended in those states.

**ITEM**

1. Name of this employer Dewey and Almy Chemical Company

P. O. address Harvey Street, Cambridge, Massachusetts

For the purpose of serving notice, as in the policy provided, this employer agrees that this address may be considered as both the residence and business address of this employer or any representative upon whom notice may be served.

Individual, copartnership, corporation, or estate? Corporation

2. The period during which the policy shall remain in force, unless canceled as in the policy provided, (herein called the policy period) shall be from the 30th day of June 1935,

to the 30th day of June 1936, at twelve and one minute o'clock A.M., standard time as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

3. Locations of all factories, shops, yards, buildings, premises or other work places of this employer, by town or city, with street and number:

Harvey Street, Cambridge, Mass. and  
South Street, Walpole, Massachusetts

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following *Divisions* as are undertaken by this employer:— 1. All industrial operations upon the premises. 2. All office forces. 3. All repairs or alterations to premises.

4. Specially rated operations on the premises. 5. Operations not on the premises.

CLASSIFICATION OF OPERATIONS (NOTE: If more than one classification, indicate each other by (b), (c), (d), etc.)		Estimated Total Annual Remuneration	Rate per \$100 of Remuneration	Estimated Premium
1 (a)	All operations incident to the Assured's business, for rating purposes classified as follows:			
	#1852-Asbestos Goods Mfg.-including spinning or weaving	\$115,000	8.598	9887 70
	#4883-Chemical Mfg.-N.O.C.	136,000	2.250	3060 00
	#4410-Rubber Goods Mfg.-N.O.C.	32,000	3.349	1071 68
	#3632-Machine Shops-N.O.C. (Foundry operations to be separately rated)	19,000	2.353	447 07
2 (a)	Clerical Office Employees	8810		
	(b) Draughtsman (engaged exclusively in the profession)—office duties only	8810		
3	New construction work by employees of this Employer only, classified as	136,000	.103	140 08
Deposit Premium - not less than 65% of 1934 earned premium - and subject to Semi-Annual Audit Endorsement attached				
Note: Appropriate classifications must be entered above with estimated remuneration, rate and premium extension in each. Not available for contractors. Repairs and maintenance of this Employer's buildings and equipment when accomplished by his employees only are included in Division 1.				

## DOES THE ASSURED OR DO ANY OF HIS EMPLOYEES OWN, LEASE AND/OR OPERATE ANY AIRCRAFT?

2 (a) Clerical Office Employees	8810
(b) Draughtsman (engaged exclusively in the profession)—office duties only	8810
3 New construction work by employees of this Employer only, classified as	

Deposit Premium - not less than 65% of  
1934 earned premium - and subject to  
Semi-Annual Audit Endorsement attached

Note: Appropriate classifications must be entered above with estimated remuneration, rate and premium extension in each. Not available for contractors.  
Repairs and maintenance of this Employer's buildings and equipment when accomplished by his employees only are included in Division 1.  
New construction, repairs, and maintenance undertaken by contractors must be separately insured.

4 #0022-Approved Loss Constant Mass. Approved Expense Constant	\$17.00	5 00
5 (a) Erection, installation, repair or demonstration of Employer's product, as follows:		
(b) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742	60,000
(c) Drivers and their Helpers, including stablemen — if not specifically included in Division 1	7205	.336
(d) Chauffeurs and their Helpers — Commercial, including incidental garage employees—if not specifically included in Division 1	7380	If any 2.030

Minimum Premium for this Policy shall be \$ 125.00

Estimated Advanced Premium

14813 13

4. The foregoing enumeration and description of employees include all persons employed in the service of this employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due, together with an estimate for the policy period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the president, any vice-president, secretary or treasurer of this employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The company shall be permitted to examine the books of this employer at any time during the policy period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employee of this employer while the policy was in force.

5. This employer is conducting no other business operations at this or any other location not herein disclosed—except as herein stated:

Not stated

6. No similar insurance has been canceled by any insurance carrier during the past year—except as herein stated:

Not stated

PATTERSON, WYLD & WINNEBERG this 6th day of December 1935.

Manager Casualty Department

Authorized Agent

306



# Hartford Accident and Indemnity Company

Hartford - Connecticut

(Hereinafter called the Company)

Does Hereby Agree WITH THIS EMPLOYER, NAMED AND DESCRIBED AS SUCH IN THE DECLARATIONS FORMING A PART HEREOF, AS RESPECTS PERSONAL INJURIES SUSTAINED BY EMPLOYEES, INCLUDING DEATH AT ANY TIME RESULTING THEREFROM, AS FOLLOWS:

COMPENSATION

ONE. (a) TO PAY PROMPTLY to any person entitled thereto under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they become due,

(1) *To such person because of the obligation for compensation for any such injury imposed upon or accepted by this employer under such of certain statutes as may be applicable thereto, cited and described in an endorsement attached to this policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and*

(2) *For the benefit of such person the proper cost of whatever medical, surgical, nurse, or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.*

It is agreed that all the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this policy, while this policy shall remain in force. Nothing herein contained shall operate to so extend this policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

ONE. (b) TO INDEMNIFY this employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this employer the company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the company under the terms of this policy for the amount of the judgment in said action not exceeding the amount of this policy.

Two. TO SERVE this employer (a) by the inspection of work places covered by the policy when and as deemed desirable by the company and thereupon to suggest to this employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and (b), upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

THREE. TO DEFEND, in the name and on behalf of this employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other

LIABILITY  
FOR DAMAGES

INSPECTION  
SERVICE

DEFEND

INSPECTION  
SERVICE

DISPENSE

COST AND  
EXPENSES

EMPLOYEES  
COVERED

INJURIES  
COVERED

POLICY  
PERIOD

BASIS OF  
PREMIUM

by law for damages on account of such injuries to each of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this employer the company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the company under the terms of this policy for the amount of the judgment in said action not exceeding the amount of this policy.

Two. TO SERVE this employer (a) by the inspection of work places covered by the policy when and as deemed desirable by the company and thereupon to suggest to this employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and (b), upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

THREE. TO DEFEND, in the name and on behalf of this employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

FOUR. TO PAY all costs taxed against this employer in any legal proceeding defended by the company, all interest accruing after entry of judgment and all expenses incurred by the company for investigation, negotiation or defense.

FIVE. THIS AGREEMENT SHALL APPLY to such injuries sustained by any person or persons employed by this employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this policy is to be computed and adjusted, and also to such injuries so sustained by the president, any vice-president, secretary, or treasurer of this employer, if a corporation. The remuneration of any such designated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

SIX. THIS AGREEMENT SHALL APPLY to such injuries so sustained by reason of the business operations described in said declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said declarations or elsewhere in connection with, or in relation to, such work places.

SEVEN. THIS AGREEMENT SHALL APPLY ONLY to such injuries so sustained by reason of accidents occurring during the policy period limited and defined as such in Item 2 of said declarations.

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

A. The premium is based upon the entire remuneration earned, during the policy period, by all employees of this employer engaged in the business operations described in said declarations, together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the president, any vice-president, secretary or treasurer of this employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above defined are undertaken by this employer but are not described or rated in said declarations, this employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with *Condition C* hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the company upon the date of issue of this policy. At the end of the policy period the actual amount

thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provisions shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this policy shall bind the company unless the consent of the company shall be endorsed hereon.

J. If this employer carries any other insurance covering a claim covered by this policy, he shall not recover from the company a larger proportion of any such claim than the sum hereby insured bears to the

ASSIGNMENT

CONCURRENT  
INSURANCE

of the remuneration earned by employees during such period shall be exhibited to the company, as provided in *Condition C* hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this employer shall immediately pay the additional amount to the company; if less, the company shall return to this employer the unearned portion, but in any event the company shall retain the minimum premium stated in said declarations. All premiums provided by this policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This policy may be canceled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancellation shall be effective. The effective date of such cancellation shall then be the end of the policy period. The law of any state, in which this policy applies, which requires that notice of cancellation shall be given to any board, commission or other state agency is hereby made a part of this policy and cancellation in such state shall not be effective except in compliance with such law. The remuneration of employees for the policy period stated in said declarations shall be computed upon the basis of the actual remuneration to the date of cancellation determined as herein provided. If such cancellation is at the company's request, the earned premium shall be adjusted *pro rata* as provided in *Condition A*. If such cancellation is at this employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the minimum premium stated in said declarations. If this employer when requesting cancellation is actually retiring from the business herein described, then the earned premium shall be computed and adjusted *pro rata*. Notice of cancellation shall be served upon this employer as the law requires, but, if no different requirement, notice mailed to the address of this employer herein given shall be a sufficient notice, and the check of the company, similarly mailed, a sufficient tender of any unearned premium.

C. The company shall be permitted, at all reasonable times during the policy period, to inspect the plants, works, machinery and appliances covered by this policy, and to examine this employer's books at any time during the policy period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this employer while this policy was in force.

D. The obligations of *Paragraph ONE (a)* foregoing are hereby declared to be the direct obligations and promises of the company to any injured employee covered hereby, or, in the event of his death, to dependents; and to each such employee or such dependent the company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the company alone or jointly with this employer. If the law of any state in which the policy is applicable provides for the enforcement of the rights of such employees or such dependents by any commission, board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the company as set forth in this paragraph shall not be affected by the failure of this employer to do or refrain from doing any act required by the policy; nor by any default of this employer after the accident in the payment of premiums or in the giving of any notice required by the policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this employer, nor by any proceeding against him as a result of which the conduct of this employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

E. As between the employee and the company, notice to or knowledge of this employer of an injury or death covered hereby shall be notice or knowledge as the case may be of the company; the jurisdiction of this employer for the purposes of any Workmen's Compensation Law covered hereby shall be jurisdiction of the company and the company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this employer in the form and manner provided by such laws and within the terms, limitations and provisions of this policy not inconsistent with such laws.

F. This employer, upon the occurrence of an accident, shall give immediate written notice thereof to the company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this employer, he shall immediately forward to the company every summons, notice or other process served upon him. Nothing elsewhere contained in this policy shall relieve this employer of his

at any time during the policy period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this employer while this policy was in force.

D. The obligations of *Paragraph ONE (a)* foregoing are hereby declared to be the direct obligations and promises of the company to any injured employee covered hereby, or, in the event of his death, to dependents; and to each such employee or such dependent the company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the company alone or jointly with this employer. If the law of any state in which the policy is applicable provides for the enforcement of the rights of such employees or such dependents by any commission, board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the company as set forth in this paragraph shall not be affected by the failure of this employer to do or refrain from doing any act required by the policy; nor by any default of this employer after the accident in the payment of premiums or in the giving of any notice required by the policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this employer, nor by any proceeding against him as a result of which the conduct of this employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

KNOWLEDGE AND JURISDICTION OF EMPLOYER DEEMED KNOWLEDGE AND JURISDICTION OF COMPANY

NOTICE TO COMPANY

ACTION AGAINST COMPANY

SPECIFIC STATUTORY PROVISIONS

ASSIGNMENT

CONCURRENT INSURANCE

SUBROGATION

CHANGES

DECLARATIONS BY EMPLOYER

E. As between the employee and the company, notice to or knowledge of this employer of an injury or death covered hereby shall be notice or knowledge as the case may be of the company; the jurisdiction of this employer for the purposes of any Workmen's Compensation Law covered hereby shall be jurisdiction of the company and the company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this employer in the form and manner provided by such laws and within the terms, limitations and provisions of this policy not inconsistent with such laws.

F. This employer, upon the occurrence of an accident, shall give immediate written notice thereof to the company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this employer, he shall immediately forward to the company every summons, notice or other process served upon him. Nothing elsewhere contained in this policy shall relieve this employer of his obligations to the company with respect to notice as herein imposed upon him.

G. No action shall lie against the company to recover upon any claim or for any loss under *Paragraph ONE (b)* foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this employer after trial of the issue or by agreement between the parties with the written consent of the company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancellation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provisions shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this policy shall bind the company unless the consent of the company shall be endorsed hereon.

J. If this employer carries any other insurance covering a claim covered by this policy, he shall not recover from the company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The company shall be subrogated in case of any payment under this policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this employer or in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates.

L. No condition or provision of this policy shall be waived or altered except by endorsement attached hereto signed by the president, a vice-president, secretary, or assistant secretary of the company, or the superintendent of its liability department; nor shall notice to any agent, nor shall knowledge possessed by an agent, or by any other person, be held to effect a waiver or change in any part of this contract.

M. The statements in *Items 1 to 6* inclusive, in the declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This policy is issued upon such statements and in consideration of the provisions of the policy respecting its premium and the payment of the premium in such declarations expressed.

S A M P L E C O P Y

## Short Rate Cancellation Table

FOR TERM OF ONE YEAR

Per Cent. of Annual Premium

Policy in Force	Per Cent. of Annual Premium
1 day	2%
2 days	4%
3 days	5%
4 days	6%
5 days	7%
6 days	8%
7 days	9%
8 days	9%
9 days	10%
10 days	10%
11 days	11%
12 days	12%
13 days	13%
14 days	13%
15 days	14%
16 days	14%
17 days	15%
18 days	16%
19 days	16%
20 days	17%
25 days	19%
30 days	20%
35 days	23%
40 days	26%
45 days	27%
50 days	28%
55 days	29%
60 days	30%
65 days	33%
70 days	36%
75 days	37%
80 days	38%
85 days	39%
90 days or 3 months	40%
105 days	45%
120 days or 4 months	50%
135 days	55%
150 days or 5 months	60%
165 days	65%
180 days or 6 months	70%
195 days	73%
210 days or 7 months	75%
225 days	78%
240 days or 8 months	80%
255 days	83%
270 days or 9 months	85%
285 days	88%
300 days or 10 months	90%
315 days	93%
330 days or 11 months	95%
360 days or 12 months	100%

# HARTFORD ACCIDENT AND INDEMNITY CO.

HARTFORD, CONNECTICUT

INCORPORATED 1913

*The Company writes the following forms of casualty insurance and fidelity and surety bonds:*

ACCIDENT AND HEALTH - AIRCRAFT (ALL FORMS) - AUTOMOBILE - BANKERS' AND BROKERS' BLANKET BONDS - BLANKET FIDELITY BONDS - BURGLARY AND THEFT - CONTINGENT LIABILITY - CONTRACT BONDS - COURT BONDS - DEPOSITORY BONDS - DRUGGISTS' LIABILITY - ELEVATOR LIABILITY - EMPLOYERS' LIABILITY - FIDELITY AND SURETY BONDS - FIDUCIARY BONDS - FORGERY AND CHECK ALTERATION - GENERAL OR LANDLORDS' LIABILITY - GOLFERS' - PHYSICIANS', SURGEONS', AND DENTISTS' LIABILITY - PLATE GLASS - PUBLIC LIABILITY - PUBLIC OFFICIAL BONDS - RESIDENCE ALL-IN-ONE - SPORTSMEN'S - TEAMS LIABILITY - THEATER LIABILITY - WORKMEN'S COMPENSATION

## NOTIC

Don't fail to notify the home at Hartford, Conn., or its duly every accident, however slight occurrence.

If accident is fatal or involves or telephone at company's expense if one is to be held.

Do not delay sending in notice, give all information desired, later.

Standard Workmen's Compensation  
and Employer's Liability Policy

Policy No. U. S. - 587494.....



**Hartford Accident  
and  
Indemnity Company**

Hartford  
Connecticut

ISSUED TO

Dewey and Almy Chemical Company

**PLEASE READ YOUR POLICY**

Carefully note condition requiring immediate  
notice of every loss

[fol. 308]

## EXHIBIT IN EVIDENCE

Dept. of Industrial Relations, Division of Industrial Accidents & Safety. Filed Dec. 5, 1935. By Frank L. Burke, Seey., per L. P. Smith.

(Page 95)

Ergo A. Majors, M. D.,  
Central Bank Building,  
Oakland, California

November 25th, 1935.

Industrial Accident Commission, State Building, San Francisco, California.

Re: Kenneth Tator. Ins: Hartford Accident & Indemnity Co. Emp: Dewey and Almy Chemical Co.

**GENTLEMEN:**

I was first called to attend this patient on October 17th 1935 at Peralta Hospital, Oakland, about five-thirty in the afternoon, where he had been taken immediately following an accident.

Accident: On October 17th 1935 the patient's right hand had been caught in a piece of machinery and run through a cog.

Injuries: Examination immediately following the accident revealed that all of the fingers and one-half of the palm of the right hand were practically ground up. The fingers were almost entirely amputated, with only shreds of skin remaining. There were fractures of the distal ends of all of the metacarpal bones of that hand.

Treatment: He was immediately sent to surgery and amputations of the second, third, fourth and fifth digits of the right hand were done, on the stump of the hand, under gas anesthetic at Peralta Hospital. Doctor Scott Quigley assisted at the operation.

Doctor Ralph Soto-Hall called in consultation on October 18th 1935 and Doctors Harold Hitchcock and Leonard S. Bernard called on October 20th 1935.

The patient was dismissed from the hospital on October 25th 1935 and dressings were done at his home until November 1st when he was able to call at this office. On this date the wounds are all entirely healed.

Prognosis: All wounds are entirely healed.

At a later date plastic work should be

[fol. 309]

(Page 96)

Industrial Accident Commission. Page 2. Nov. 25, 1935  
done which will aid in making the remaining portion of the hand more useful.

Very truly yours, (Signed) Ergo A. Majors, M. D.

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[fol. 310]

EXHIBIT IN EVIDENCE

Dept. of Industrial Relations, Division of Industrial Accidents and Safety. Filed Dec. 23, 1936. By Frank J. Burke, Secy., per L. P. Smith.

(Page 100)

Keith & Creede

December 16, 1935.

Mr. Raymond G. Lindley, Referee Industrial Accident Commission, State Building, Civic Center, San Francisco, California.

Re Tator vs. Dewey & Almy Co. I. A. C. No. 49516

DEAR MR. LINDLEY:

I am enclosing herewith two sets of bills from the Peralta Hospital, one covering hospital attention while Mr. Tator was in the hospital and the other for \$5.66, including drugs and bandages furnished to him at Dr. Majors' request after he left the hospital. If the defendants raise any question as to the necessity of a private room, please let me know and I will obtain a report from the attending physician stating that a private room was essential in this case in view of the very serious injury, which is a fact. In view of the shortness of his stay in the hospital, I take it that nobody will dispute this point.

I am also enclosing herewith bill from the Dewey and Almy Chemical Company to Mr. Tator for \$128.50 advanced at Mr. Tator's request by the company for nursing services. The company did not furnish this nursing service, but paid the bills for Mr. Tator at his request.

Also enclosed find bills of Dr. Majors and Dr. Quigley.

Very truly yours, (Signed) Frank J. Creede.

FJC:ER.

Enes.

CC. W. N. Mullen, 155 Sansome St., S. F.

CC. Hartford Acc. & Ind. Co., 441 California St., S. F.

[fols. 311-312]

(Page 101)

Medical bills are omitted from the Return.

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[fol. 313] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed June  
29, 1938

The appellant states that the points upon which it intends to rely in this court in the above entitled cause are:

I. The Supreme Court of the State of California erred in refusing to annul the award of the Industrial Accident Commission of the State of California and in permitting any award against appellant for the injury involved in this case under the Workmen's Compensation Act of the State of California.

II. The Supreme Court of the State of California erred in denying full faith and credit to the Public Act of the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chapter 152 designated: The Massachusetts Workmen's Compensation Act), and erred in holding, on the authority of the case of Alaska Packer's Assn., 294 U. S. 532, that it was not a denial of full faith and credit to refuse to apply the Massachusetts Workmen's Compensation Act to the claim for compensation asserted by Appellee Tator.

III. The Supreme Court of the State of California erred in holding that under the circumstances of this case the governmental policy of the State of California weighs more heavily in the scale of decision than the law of the Commonwealth of Massachusetts, because medical and hospital expenses were incurred in California, and, for that reason, the conflict in laws must be resolved in favor of California, the state where the injury occurred.

IV. The Supreme Court of the State of California erred in refusing to give effect to the contract of hire between appellant and appellee Tator by which the parties agreed as an incident of the contract of hire to accept as the exclusive remedy for industrial injury the provisions of the Massachusetts' Workmen's Compensation Act, no matter where received. In so holding, the Supreme Court of the State of California denied full faith and credit to a public act of the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chapter 152, designated: The Massachusetts Workmen's Compensation Act), and failed to give effect to sections 905 and 906 of the Revised Statutes (28 U. S. C. A., Sections 687 and 688).

V. The Supreme Court of the State of California erred in refusing to hold that the imposition of liability by the State of California for injuries therein by a non-resident employee, whose contract of employment was made and entered into in the Commonwealth of Massachusetts, is economically unsound and exposes the employer to similar liability under the laws of any state of the Union in which his employees may perform temporary services, or of any state through which they may travel.

#### Designation of the Parts of the Record to be Printed

The appellant further states that the following parts of the transcript of record are necessary for the consideration of the case and that they, and each of them, are deemed necessary to be printed:

[fol. 315]

Record page

Petition for Writ of Review in the District Court of Appeal of the State of California, First Appellate District, Division Two, excluding the memorandum of points and authorities in support of the petition

4-15, inel.

	Record page
Order denying Petition for Writ of Review in the District Court of Appeal of the State of California .....	4
Petition for Hearing in the Supreme Court of the State of California, including Points and Authorities in support thereof, but excluding Exhibit A (Record pages 30-34, incl.) and Exhibit B (Record page 35) .....	(16- 29, incl. (36- 58, incl.
Order granting Hearing in the Supreme Court of the State of California .....	59
Of the Return to Writ of Review, the fol- lowing:	
Title Page	63
Certification .....	64- 65, incl.
Index .....	66
Application for adjustment of claim .....	67- 68, incl.
Answer .....	69- 71, incl.
Report of Hearing of November 27, 1935	
Excerpts from the testimony of Kenneth Tator .....	72- 81, incl.
Excerpts from the testimony of D. Angell .....	82
Findings and Award .....	83- 87, incl.
Petition for Rehearing .....	88-102, incl.
Order denying Rehearing .....	103
Order of the Supreme Court of the State of California vacating submission .....	104
Points and Authorities in Support of Re- spondents and on Behalf of Certain Physi- cians Who Rendered Medical Services to Respondent Tator .....	107-121, incl.
Decision and Opinion of January 31, 1938 .....	122-137, incl.
Petition for Rehearing in the Supreme Court of the State of California .....	138-156, incl.
Order of February 2 <sup>nd</sup> , 1938, denying Peti- tion for Rehearing .....	157
Remittitur .....	158

This statement of points to be relied upon  
and designation of parts of record to be  
printed.

Dated June 23, 1938.

W. N. Mullen, George C. Faulkner, Attorneys for  
Appellant.

[fol. 316] Service of and Receipt of a copy of the within statement of points to be relied upon and designation of the parts of the record to be printed are hereby acknowledged this 23d day of June, 1938.

Everett A. Corten, Attorney for Appellee, Industrial Accident Commission of the State of California.  
Keith & Creede, Attorneys for Appellee, Kenneth Tator.

[fol. 317] [File endorsement omitted.]

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[fol. 318] SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF THE RECORD  
TO BE PRINTED—Filed June 29, 1938

Appellees state that the following parts of the transcript of the record are necessary for the consideration of the case and that they and each of them are deemed necessary to be printed:

	Transcript page
Respondent Kenneth Tator's Answer to petition for writ of review in the District Court of Appeal of the State of California, Division Two, including Points and Authorities .....	196-233, incl.
Respondent Industrial Accident Commission's Answer to Petition for Writ of Review in the District Court of Appeal of the State of California, Division Two .....	234-236 "
[fol. 319] Respondent Industrial Accident Commission's Answer to Petition for Hearing in the Supreme Court of the State of California .....	237-239, incl.
Respondent Kenneth Tator's Answer to Petition for Hearing in the Supreme Court of the State of California .....	240-270 "
Respondents' Joint Answer to Petition for Hearing in the Supreme Court of the State of California .....	271-273 "
Report of Hearing of November 27, 1935 .....	274-275 "

	Transcript Page
Excerpts from testimony of Kenneth Tator.	276-286
	298, line 18 to page 301 incl.
Excerpts from testimony of Arthur D. Angell .....	287-298    " line 15
Insurance Policy of Pacific Employers In- surance Company .....	302-304    "
Insurance Policy of Hartford Accident & Indemnity Company .....	306-307    " 308-309    "
Letter of Ergo A. Majors, M. D. ....	310
Letter of Keith & Creede .....	311
Notation in Return that medical bills are omitted .....	
This Designation of the parts of the Record to be printed.	

Everett A. Corten, 119 State Bldg., San Francisco,  
Calif. Gordon S. Keith, Frank J. Creede, Mills  
Tower, San Francisco, Calif. Hartley F. Peart,  
Howard Hassard, 111 Sutter Street, San Fran-  
cisco, Calif.

[fol. 320] Service and receipt of copy of the within Ap-  
pellée's Designation of the Parts of the Record to be Printed  
are hereby acknowledged this 24th day of June, 1938.

Pacific Employers Insurance Company, a Corpora-  
tion, by W. N. Mullin, Its Attorney.

Address: 155 Sansome Street, San Francisco, California.

[fol. 321] [File endorsement omitted.]

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Endorsed on cover: File No. 42,643. California Supreme  
Court. Term No. 158. Pacific Employers Insurance Com-  
pany, Appellant, vs. Industrial Accident Commission of the  
State of California and Kenneth Tator. Filed June 29, 1938.  
Term No. 158, O. T., 1938.

[fol. 322] **SUPREME COURT OF THE UNITED STATES**

**ORDER ALLOWING CERTIORARI—Filed October 10, 1938**

**Appeal from the Supreme Court of the State of California**

Treating the appeal papers herein from the Supreme Court of the State of California as an application for a writ of certiorari;

On Consideration Whereof, it is ordered by this Court that the said application for writ of certiorari be, and the same is hereby, granted.

(8382)

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